

**AGENDA**  
**Statutory Revision Committee (SRC)**  
**Friday, February 26, 2021**  
**SCR 352 / Upon Adjournment**

Elect new chair and vice-chair

Discussion of memos and bill drafts:

1. [Clarifying Who Can Perform Auricular Acudetox](#)  
*Drafter: Kristen Forrestal / LLS 21-0796*
2. [Corrections to the "Colorado Marijuana Code"](#)  
*Drafter: Michael Dohr / LLS 21-0806*
3. Memos and bills requested by the Department of Revenue
  - a. [Special Fuels](#)  
*Drafter: Pierce Lively / LLS 21-0726*
  - b. [Contributions to Enterprise Zones](#)  
*Drafter: Sarah Lozano / LLS 21-0725*
  - c. [Credit for Child Care Facilities](#)  
*Drafter: Sarah Lozano / LLS 21-0724*
  - d. [Withholding Income from Oil and Gas](#)  
*Drafter: Ed DeCecco / LLS 21-0722*
  - e. [DOR Administrative Statute Fixes](#)  
*Drafter: Esther van Mourik / LLS 21-0723*
  - f. [Sales Tax Statute Modifications to Address Defects](#)  
*Drafter: Esther van Mourik / LLS 21-0727*
  - g. [Add Use Tax Exemption to Some Sales Tax Exemptions](#)  
*Drafter: Esther van Mourik / LLS 21-0718*
  - h. [Capitol Dome Restoration Fund](#)  
*Drafter: Esther van Mourik / LLS 21-0717*
4. [Repeal of Statutes Authorizing 17-year-old Individuals to Vote in Primary Elections As a Result of the Passage of Amendment 76](#)  
*Drafter: Megan Waples / LLS 21-0804*
5. [Update of Senate Bill 19-263 Effective Date Clause](#)  
*Drafter: Jason Gelender / LLS 21-0789*

Schedule next meeting

Contact the staff of the SRC at [statutoryrevision.ga@state.co.us](mailto:statutoryrevision.ga@state.co.us)

# **OFFICE OF LEGISLATIVE LEGAL SERVICES**

**COLORADO GENERAL ASSEMBLY**

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## **MEMORANDUM <sup>1</sup>**

**TO:** Statutory Revision Committee

**FROM:** Kristen Forrestal, Office of Legislative Legal Services

**DATE:** February 19, 2021

**SUBJECT:** Practice of Auricular Acudetox by Trained Professionals

### **Summary**

In H.B. 20-1206, the General Assembly repealed a portion of law in article 245 of title 12, C.R.S., the mental health practice act, that required a professional to be registered, certified, or licensed as a mental health professional in order to practice auricular acudetox. The bill failed to include a conforming amendment to clarify that it is not an unlawful act for a professional to perform auricular acudetox without holding a registration, certification, or license. This error was brought to the attention of the Office of Legislative Legal Services by a proponent of the changes made to the mental health practice act in H.B. 20-1206.

### **Analysis**

Prior to the passage of H.B.20-1206, in order for a person to be authorized to perform auricular acudetox, the statutes required that the person be a mental health professional with auricular acudetox training and be registered, certified, or licensed pursuant the mental health practice act. H.B. 20-1206 amended the practice act so that a person no longer needs to hold a registration, certification, or license.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Contrary to the new requirements in the mental health practice act, section § 12-200-108 (4)(a), C.R.S., currently states that it is an unlawful act to perform auricular acudetox without holding a registration, certification, or license as a mental health professional. The attached bill deletes this requirement from § 12-200-108 (4)(a), C.R.S., while retaining the appropriate training requirements that a professional needs to meet in order to lawfully perform auricular acudetox.

## **Statutory Charge<sup>2</sup>**

The attached bill fits under the charge of the Statutory Revision Committee as it proposes to fix a contradiction that currently exists in the law.

## **Proposed Bill**

The attached bill drafted by the Office of Legislative Legal Services proposes a change to the current law to correct the contradiction in the mental health practice act and to reflect the legislative intent of H.B. 20-1206.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.15.21

DRAFT

LLS NO. 21-0796.01 Kristen Forrestal x4217

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Auricular Acudetox Professional Practice"  
**DEADLINES:** File by: 2/25/2021

**A BILL FOR AN ACT**

101 CONCERNING THE PRACTICE OF AURICULAR DETOX BY A  
102 PROFESSIONAL, AND, IN CONNECTION THEREWITH, CLARIFYING  
103 THAT IN ORDER TO PERFORM AURICULAR ACUDETOK, A PERSON  
104 DOES NOT NEED TO BE LICENSED, CERTIFIED, OR REGISTERED AS  
105 A MENTAL HEALTH PROFESSIONAL.

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** In 2020, the general assembly repealed the requirement in the mental health practice act that a

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

professional must be licensed, registered, or certified as a mental health professional in order to practice auricular acudetox. The bill makes a conforming amendment to clarify that it is not an unlawful act for a professional to perform auricular acudetox without a license, registration, or certification as a mental health professional.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 12-200-108, **amend** (4)(a), (4)(b), and (4)(d) as follows:

**12-200-108. Unlawful acts - exceptions - definition.**

(4)(a) Notwithstanding any provision of this article 200 to the contrary, a professional who has provided documentation that ~~he or she~~ THE PROFESSIONAL has been trained to perform auricular acudetox in compliance with subsection (4)(d) of this section may perform auricular acudetox if the auricular acudetox is performed under the professional's current scope of practice. ~~and the professional is:~~

~~(I) Licensed pursuant to article 245 of this title 12; or~~  
~~(II) Certified as a level III addiction counselor pursuant to part 8 of article 245 of this title 12.~~

~~(III) Repealed.~~

(b) A ~~mental health~~ professional performing auricular acudetox pursuant to this subsection (4) shall not use the title "acupuncturist" or otherwise claim to be a person qualified to perform acupuncture beyond the scope of this subsection (4).

(d) In order to perform auricular acudetox pursuant to this subsection (4), a ~~mental health-care~~ professional must successfully complete a training program in auricular acudetox for the treatment of substance use disorders that meets or exceeds standards of training established by the National Acupuncture Detoxification Association or

1 another organization approved by the director.

2           **SECTION 2. Safety clause.** The general assembly hereby finds,  
3 determines, and declares that this act is necessary for the immediate  
4 preservation of the public peace, health, or safety.

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## **MEMORANDUM<sup>1</sup>**

**TO:** Statutory Revision Committee

**FROM:** Michael Dohr, Office of Legislative Legal Services

**DATE:** February 19, 2021

**SUBJECT:** Correction of errors in article 10 of title 44, C.R.S.

### **Summary**

In 2019, the General Assembly passed Senate Bill 19-224, which reorganized the marijuana codes, compiling all of the marijuana provisions into one article, article 10 of title 44, C.R.S. During the Office of Legislative Legal Services' publications review during the 2019 interim, legal citation errors and grammatical errors were discovered that should be fixed.

### **Analysis**

Senate Bill 19-224 included a number of federal law citations that included both the federal statute and the federal rule, but references refer only to provisions that are in the federal law. So, the citations to the federal statute should be removed, leaving the citations to the federal rule to correct the error. The publications review of title 44 also revealed various grammatical and wording issues that should also be considered for revision in a Statutory Revision Committee bill.

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## **Statutory Charge<sup>2</sup>**

Because article 10 of title 44, C.R.S., contains citation errors and because correcting grammatical and wording issues will streamline article 10 of title 44, C.R.S., the proposed bill fits within the charge of the Statutory Revision Committee.

## **Proposed Bill**

The attached bill corrects the errors in article 10 of title 44, C.R.S.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.



**First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO**

**DRAFT**

LLS NO. 21-0806.01 Michael Dohr x4347

**COMMITTEE BILL**

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Statutory Revision Committee

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**@House1 Committees**

**@House2 Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING CORRECTING NONSUBSTANTIVE ERRORS IN THE**  
102     **COLORADO MARIJUANA CODE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill corrects citations in the marijuana code and grammatical and wording issues.

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1     *Be it enacted by the General Assembly of the State of Colorado:*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing law.  
Dashes through the words or numbers indicate deletions from existing law.

1     **SECTION 1.** In Colorado Revised Statutes, 44-10-103, **amend** (8), (9),  
2     (41), (50)(a) introductory portion, (50)(a)(I), (50)(a)(II)(A), (50)(b)(I),  
3     (50)(d), (51), (52) introductory portion, (52)(a), (65), and (68) as follows:

4             **44-10-103. Definitions.** As used in this article 10, unless the  
5     context otherwise requires:

6             (8) "Affiliate" of, or person "affiliated with", has the same  
7     meaning as defined in the ~~"Securities Act of 1933", as amended~~ **17 CFR**  
8     **230.405.**

9             (9) "Beneficial owner of", "beneficial ownership of", or  
10    "beneficially owns an" owner's interest is determined in accordance with  
11   ~~section 13(d) of the federal "Securities Exchange Act of 1934" as~~  
12   ~~amended, and rule 13d-3 promulgated thereunder~~ **17 CFR 240.13d-3.**

13            (41) "Medical marijuana transporter" means an entity or person  
14    ~~that is~~ licensed to transport medical marijuana and medical marijuana  
15    products from one medical marijuana business to another medical  
16    marijuana business and to temporarily store the transported medical  
17    marijuana and medical marijuana products at its licensed premises, but is  
18    not authorized to sell medical marijuana or medical marijuana products  
19    under any circumstances.

20            (50) "Publicly traded corporation" means any person other than an  
21    individual that is organized under the laws of and for which its principal  
22    place of business is located in one of the states or territories of the United  
23    States or District of Columbia or another country that authorizes the sale  
24    of marijuana and that:

25            (a) Has a class of securities registered pursuant to ~~section 12 of~~  
26    ~~the federal "Securities Exchange Act of 1934" as amended~~ 15 U.S.C. SEC.  
27    77a ET SEQ., that:

1 (I) Constitutes "covered securities" pursuant to ~~section 18~~  
2 ~~(b)(1)(A) of the federal "Securities Act of 1933", as amended~~ 15 U.S.C.  
3 SEC. 77r (b)(1)(A); or

4 (II) Is qualified and quoted on the OTCQX or OTCQB tier of the  
5 OTC markets if:

6 (A) The person is then required to file reports and is filing reports  
7 on a current basis with the federal securities and exchange commission  
8 pursuant to ~~the federal "Securities Exchange Act of 1934", as amended~~  
9 15 U.S.C. SEC. 78a ET SEQ., as if the securities constituted "covered  
10 securities" as described in ~~subsection (46)(a)(I)~~ SUBSECTION (50)(a)(I) of  
11 this section; and

12 (b) Is an entity that has a class of securities listed on the Canadian  
13 securities exchange, Toronto stock exchange, TSX venture exchange, or  
14 other equity securities exchange recognized by the state licensing  
15 authority, if:

16 (I) The entity constitutes a "foreign private issuer", as defined in  
17 ~~rule 405 promulgated pursuant to the federal "Securities Act of 1933", as~~  
18 ~~amended~~ **17 CFR 230.405**, whose securities are exempt from registration  
19 pursuant to ~~section 12 of the federal "Securities Exchange Act of 1934",~~  
20 ~~as amended~~ 15 U.S.C. SEC. 78a ET SEQ. pursuant to ~~rule 12g3-2 (b)~~  
21 ~~promulgated pursuant to the federal "Securities Exchange Act of 1934",~~  
22 ~~as amended~~ **17 CFR 240.12g3-2**; and

23 (d) A "publicly traded corporation" described in subsection  
24 (50)(a), (50)(b), or (50)(c) of this section does not include:

25 (I) An "ineligible issuer", as defined in ~~rule 405 promulgated~~  
26 ~~pursuant to the federal "Securities Act of 1933", as amended~~ **17 CFR**  
27 **230.405**, unless such publicly traded corporation satisfies the definition

1 of ineligible issuer solely because it is one or more of the following, and  
2 the person is filing reports on a current basis with the federal securities  
3 and exchange commission pursuant to ~~the federal "Securities Exchange~~  
4 ~~Act of 1934", as amended~~ 15 U.S.C. SEC. 78a ET SEQ., as if the securities  
5 constituted "covered securities" as described in subsection (50)(a)(I) of  
6 this section, and prior to becoming a publicly traded corporation, the  
7 person for at least two years was licensed by the state licensing authority  
8 as a medical marijuana business or retail marijuana business with a  
9 demonstrated history of operations in the state of Colorado, and during  
10 such time was not subject to suspension or revocation of the license:

11 (A) A "blank check company", as defined in ~~rule 419 (a)(2)~~  
12 ~~promulgated pursuant to the federal "Securities Act of 1933", as amended~~  
13 **17 CFR 230.419 (a)(2);**

14 (B) An issuer in an offering of "penny stock", as defined in ~~rule~~  
15 ~~3a51-1 promulgated pursuant to the federal "Securities Exchange Act of~~  
16 ~~1934"~~ **17 CFR 240.3a51-1;** or

17 (C) A "shell company", as defined in ~~rule 405 promulgated~~  
18 ~~pursuant to the federal "Securities Act of 1933", as amended~~ **17 CFR**  
19 **240.12b-2;** and

20 (II) A person disqualified as a "bad actor" ~~under rule 506 (d)~~  
21 ~~promulgated pursuant to the federal "Securities Act of 1933", as amended~~  
22 PURSUANT TO 17 CFR 230.506.

23 (51) "Qualified institutional investor" means:

24 (a) A bank, as defined in ~~section 3 (a)(6) of the federal "Securities~~  
25 ~~Exchange Act of 1934", as amended~~ 15 U.S.C. SEC. 78c (a)(6), if the bank  
26 is current in all applicable reporting and record-keeping requirements  
27 under such act and rules promulgated thereunder;

1 (b) A bank holding company, as defined in ~~the federal "Bank~~  
2 ~~Holding Company Act of 1956", as amended~~ 12 U.S.C. SEC. 1841 (a)(1),  
3 if the bank holding company is registered and current in all applicable  
4 reporting and record-keeping requirements under such act and rules  
5 promulgated thereunder;

6 (c) An insurance company, as defined in ~~section 2 (a)(17) of the~~  
7 ~~federal "Investment Company Act of 1940", as amended~~ 15 U.S.C. SEC.  
8 80a-2 (a)(17), if the insurance company is current in all applicable  
9 reporting and record-keeping requirements under such act and rules  
10 promulgated thereunder;

11 (d) An investment company registered ~~under section 8 of the~~  
12 ~~federal "Investment Company Act of 1940", as amended~~ and subject to  
13 15 U.S.C. SEC. 80a-1 ET SEQ., if the investment company is current in all  
14 applicable reporting and record-keeping requirements under such act and  
15 rules promulgated thereunder;

16 (e) An employee benefit plan or pension fund subject to ~~the~~  
17 ~~federal "Employee Retirement Income Security Act of 1974"~~ 29 U.S.C.  
18 SEC. 1001 ET SEQ., excluding an employee benefit plan or pension fund  
19 sponsored by a licensee or an intermediary holding company licensee that  
20 directly or indirectly owns ten percent or more of a licensee;

21 (f) A state or federal government pension plan;

22 (g) A group comprised entirely of persons specified in subsections  
23 (51)(a) to (51)(f) of this section; or

24 (h) Any other entity identified by rule by the state licensing  
25 authority.

26 (52) "Qualified private fund" means an issuer that would be an  
27 investment company, as defined in, ~~section 3 of the federal "Investment~~

1 ~~Company Act of 1940~~" but for the exclusions provided under, sections  
2 ~~3(c)(1) or 3(c)(7) of that act~~ 15 U.S.C. SEC. 80a-3, and that:

3 (a) Is advised or managed by an investment adviser, as defined  
4 and registered ~~under sections 80b-1-21, title 15 of the federal "Investment~~  
5 ~~Advisers Act of 1940~~" PURSUANT TO 15 U.S.C. SEC. 80b-1 ET SEQ., and  
6 for which the registered investment adviser is current in all applicable  
7 reporting and record-keeping requirements under such act and rules  
8 promulgated thereunder; and

9 (65) "Retail marijuana transporter" means an entity or person ~~that~~  
10 ~~is~~ licensed to transport retail marijuana and retail marijuana products from  
11 one retail marijuana business to another retail marijuana business and to  
12 temporarily store the transported retail marijuana and retail marijuana  
13 products at its licensed premises, but is not authorized to sell retail  
14 marijuana or retail marijuana products under any circumstances.

15 (68) "Security" has the same meaning as DEFINED in ~~section (2)(1)~~  
16 ~~of the federal "Securities Act of 1933", as amended~~ 15 U.S.C. SEC. ET  
17 SEQ. 77b (a)(1).

18 **SECTION 2.** In Colorado Revised Statutes, 44-10-202, **amend**  
19 (1)(b) as follows:

20 **44-10-202. Powers and duties of state licensing authority -**  
21 **rules - legislative declaration - repeal. (1) Powers and duties.** The  
22 state licensing authority shall:

23 (b) Grant or refuse state licenses for the cultivation, manufacture,  
24 distribution, sale, hospitality, and testing of regulated marijuana and  
25 regulated marijuana products as provided by law; suspend, fine, restrict,  
26 or revoke such licenses, whether active, expired, or surrendered, upon a  
27 violation of this article 10 or any rule promulgated pursuant to this article

1 10; and impose any penalty authorized by this article 10 or any rule  
2 promulgated pursuant to this article 10. The state licensing authority may  
3 take any action with respect to a registration OR PERMIT pursuant to this  
4 article 10 as it may with respect to a license pursuant to this article 10, in  
5 accordance with the procedures established pursuant to this article 10.

6 **SECTION 3.** In Colorado Revised Statutes, 44-10-203, **amend**  
7 (2)(q) as follows:

8 **44-10-203. State licensing authority - rules. (2) Mandatory**  
9 **rule-making.** Rules promulgated pursuant to section 44-10-202 (1)(c)  
10 must include but need not be limited to the following subjects:

11 (q) Temporary appointee registrations issued pursuant to ~~section~~  
12 ~~44-10-401 (2)~~ SECTION 44-10-401 (3), including occupational and  
13 business registration requirements; application time frames; notification  
14 requirements; issuance, expiration, renewal, suspension, and revocation  
15 of a temporary appointee registration; and conditions of registration;

16 **SECTION 4.** In Colorado Revised Statutes, 44-10-307, **amend**  
17 (1)(n), (1)(o), and (1)(p) as follows:

18 **44-10-307. Persons prohibited as licensees - definition. (1) A**  
19 license provided by this article 10 shall not be issued to or held by:

20 (n) A person that is or has a controlling beneficial owner that is  
21 disqualified as a "bad actor" ~~under rule 506 (d) promulgated pursuant to~~  
22 ~~the federal "Securities Act of 1933", as amended, and subject PURSUANT~~  
23 to 17 CFR 230.506 (d)(1);

24 (o) A person that is not a publicly traded corporation that is or has  
25 a passive beneficial owner or indirect financial interest holder that is  
26 disqualified as a "bad actor" ~~under rule 506 (d) promulgated pursuant to~~  
27 ~~the federal "Securities Act of 1933", as amended, and subject PURSUANT~~

1 to 17 CFR 230.506 (d)(1);

2 (p) A person that is a publicly traded corporation that is or has a  
3 nonobjecting passive beneficial owner or indirect financial interest holder  
4 that is disqualified as a "bad actor" ~~under rule 506 (d) promulgated~~  
5 ~~pursuant to the federal "Securities Act of 1933", as amended, and subject~~  
6 PURSUANT to 17 CFR 230.506 (d)(1); or

7 **SECTION 5.** In Colorado Revised Statutes, 44-10-308, **amend**  
8 (1)(a)(VII) as follows:

9 **44-10-308. Business and owner requirements - legislative**  
10 **declaration - definition.** (1) (a) The general assembly hereby finds and  
11 declares that:

12 (VII) Recognizing that participation by publicly traded  
13 corporations in Colorado's medical marijuana industry and retail  
14 marijuana industry creates an increased need to assess barriers of entry for  
15 minority- and woman-owned businesses, with such efforts being made to  
16 identify solutions to arrive at a greater balance and for further equity for  
17 minority- and woman-owned businesses, and in a manner that is  
18 consistent with the public safety and enforcement goals as stated ~~herein~~  
19 IN THIS SUBSECTION (1), it is therefore of substantive importance to  
20 address the lack of minority- and woman-owned businesses' inclusion in  
21 Colorado's medical marijuana industry and retail marijuana industry,  
22 social justice issues associated with marijuana prohibition, suitability  
23 issues relating to past convictions for potential licensees, licensing fees,  
24 and economic challenges that arise with the application processes.

25 **SECTION 6.** In Colorado Revised Statutes, 44-10-401, **amend**  
26 (1) and (2)(c) as follows:

27 **44-10-401. Classes of licenses.** (1) For the purpose of regulating



1 the cultivation, manufacture, distribution, hospitality, and sale of  
2 regulated marijuana and regulated marijuana products, the state licensing  
3 authority in its discretion, upon application in the prescribed form made  
4 to it, may issue and grant to the applicant a license from any of the  
5 ~~following~~ classes LISTED IN SUBSECTION (2) OF THIS SECTION, subject to  
6 the provisions and restrictions provided by this article 10.

7 (2) (c) THE FOLLOWING ARE REGULATED MARIJUANA LICENSES OR  
8 REGISTRATIONS: Occupational licenses and registrations for owners,  
9 managers, operators, employees, contractors, and other support staff  
10 employed by, working in, or having access to restricted areas of the  
11 licensed premises, as determined by the state licensing authority. The  
12 state licensing authority may take any action with respect to a registration  
13 or permit pursuant to this article 10 as it may with respect to a license  
14 pursuant to this article 10, in accordance with the procedures established  
15 pursuant to this article 10.

16 **SECTION 7.** In Colorado Revised Statutes, 44-10-603, **amend**  
17 (2) as follows:

18 **44-10-603. Retail marijuana products manufacturer license -**  
19 **rules - definition.** (2) Retail marijuana products must be prepared on a  
20 licensed premises that is used exclusively for the manufacture and  
21 preparation of retail marijuana or retail marijuana products and using  
22 equipment that is used exclusively for the manufacture and preparation  
23 of retail marijuana products; except that, if permitted by the local  
24 jurisdiction and subject to rules of the state licensing authority, a retail  
25 marijuana products manufacturer licensee may share the same premises  
26 as: a:

27 (a) A medical marijuana products manufacturer licensee so long

1 as a virtual or physical separation of inventory is maintained;

2 (b) A commonly owned marijuana research and development  
3 licensee so long as virtual or physical separation of inventory and  
4 research activity is maintained; or

5 (c) AN accelerator manufacturer licensee if the retail marijuana  
6 products manufacturer has its premises endorsed pursuant to rule before  
7 each accelerator manufacturer licensee operates and each accelerator  
8 manufacturer licensee is approved to operate on that premises.

9 **SECTION 8.** In Colorado Revised Statutes, 44-10-801, **repeal**  
10 (1)(d) as follows:

11 **44-10-801. Marijuana cash fund.** (1) (d) ~~(f) On July 1, 2014, the~~  
12 ~~state treasurer shall transfer to the marijuana tax cash fund created in~~  
13 ~~section 39-28.8-501 any money in the fund that is attributable to the retail~~  
14 ~~marijuana excise tax transferred pursuant to section 39-28.8-305 (1)(b),~~  
15 ~~the retail marijuana sales tax transferred pursuant to section 39-28.8-203~~  
16 ~~(1)(b), or the sales tax imposed pursuant to section 39-26-106, on the~~  
17 ~~retail sale of marijuana products pursuant to this article 10.~~

18 ~~(H) On the date on which the state controller publishes the~~  
19 ~~comprehensive annual financial report of the state for the 2013-14 state~~  
20 ~~fiscal year, the state treasurer shall transfer to the marijuana tax cash fund~~  
21 ~~created in section 39-28.8-501 any remaining money in the fund that is~~  
22 ~~attributable to the retail marijuana excise tax transferred pursuant to~~  
23 ~~section 39-28.8-305 (1)(b), the retail marijuana sales tax transferred~~  
24 ~~pursuant to section 39-28.8-203 (1)(b), or the sales tax imposed pursuant~~  
25 ~~to section 39-26-106, on the retail sale of marijuana products under this~~  
26 ~~article 10.~~

27 ~~(HH) On July 1, 2019, the state treasurer shall transfer nine~~

1    ~~hundred fourteen thousand four hundred sixteen dollars from the~~  
2    ~~marijuana cash fund to the marijuana tax cash fund created in section~~  
3    ~~39-28.8-501. On July 1, 2020, the state treasurer shall transfer eight~~  
4    ~~hundred ninety thousand nine hundred one dollars from the marijuana~~  
5    ~~cash fund to the marijuana tax cash fund.~~

6            ~~(IV) Notwithstanding any other provision of law, on June 30,~~  
7    ~~2020, the state treasurer shall transfer one million six hundred thousand~~  
8    ~~dollars from the marijuana cash fund to the general fund.~~

9    ~~<{*Petition or safety clause?*>~~

# OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

COLORADO STATE CAPITOL  
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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Pierce Lively, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Clean Up of Sales and Use Tax Exemptions for Special Fuels, Farm Equipment, and Livestock

### Summary

Sections 39-26-715 and 39-26-716, C.R.S., in relevant part, create the sales and use tax exemptions for special fuels, farm equipment, and livestock. These sections contain a number of antiquated and redundant provisions. In addition, the sales and use tax exemptions are separated in ways that are unnecessary and may create conflicts. Section 39-26-716, C.R.S., contains an unused definition of "agricultural compounds," unnecessarily references "poultry" in a sales and use tax exemption for "livestock," and separates sales and use tax exemptions in a way that may create confusion and lead to future disparity. Section 39-26-715 (2)(a)(I), C.R.S., contains the use tax for special fuel used in farm vehicles, even though the sales tax for special fuel used in farm vehicles is in section 39-26-716 (2)(a), C.R.S. These antiquated and redundant provisions should be removed from statute and these unnecessarily separate provisions should be reorganized.

The Department of Revenue brought this issue to the attention of the Office of Legislative Legal Services.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

# Analysis

## 1. Definition of "agricultural compounds."

The definition of "agricultural compounds" in section 39-26-716 (1)(a), C.R.S., is outdated. House Bill 12-1037 removed the sales and use tax exemptions for "agricultural compounds" from sections 39-26-716 (2)(d) and (3)(d), C.R.S., but House Bill 12-1037 did not remove section 39-26-716 (1)(a), C.R.S., which defines "agricultural compounds." Thus, although the definition of "agricultural compounds" remains in section 39-26-716, C.R.S., the term is no longer used in that section. The definition of "agricultural compounds" should be removed from section 39-26-716, C.R.S., by removing section 39-26-716 (1)(a), C.R.S.

## 2. Sale and use of bedding for "livestock or poultry."

The separate reference to "poultry" in section 39-26-716 (4)(c), C.R.S., is redundant because "poultry" is already included within the definition of "livestock." Section 39-26-716 (4)(c), C.R.S., authorizes a tax exemption for "[A]ll sales and purchases of straw and other bedding for use in the care of livestock or poultry and the storage, use, or consumption of straw and other bedding for use in the care of livestock or poultry." For purposes of section 39-26-716 (4)(c), C.R.S., "livestock" is defined to include poultry:

**39-26-102. Definitions.** As used in this article 26, unless the context otherwise requires:

(5.5) "Livestock" means cattle, horses, mules, burros, sheep, lambs, **poultry**, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. "Livestock" shall also mean "alternative livestock" as defined under section 35-41.5-102, C.R.S. "Livestock" shall not mean a pet animal as defined under section 35-80-102 (10), C.R.S. (**Emphasis added.**)

Accordingly, it is unnecessary to explicitly reference "poultry" in section 39-26-716 (4)(c), C.R.S. The reference to "poultry" should be removed from section 39-26-716 (4)(c), C.R.S.

**3. Storage and use of neat cattle, sheep, lambs, swine, and goats or the storage and use of mares and stallions kept, held, and used for breeding purposes only.**

The separate use tax exemption for certain livestock in section 39-26-716 (3)(a), C.R.S., is redundant because there is a broader exemption from sales and use taxes that applies to those livestock. Section 39-26-716 (3)(a), C.R.S., creates a use tax exemption for the storage and use of certain animals:

**39-26-716. Agriculture and livestock - special fuels - definitions.** (3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage and use of neat cattle, sheep, lambs, swine, and goats within this state, or the storage and use within this state of mares and stallions kept, held, and used for breeding purposes only;

Section 39-26-716 (4)(a), C.R.S., creates a sales and use tax exemption for all livestock:

**39-26-716. Agriculture and livestock - special fuels - definitions.** (4) The following shall be exempt from taxation under the provisions of parts 1 and 2 of this article:

(a) All sales and purchases of livestock, all sales and purchases of live fish for stocking purposes, and all farm close-out sales and the storage, use, or consumption of such property;

Under the definition of livestock quoted above in section 39-26-102 (5.5), C.R.S., this exemption includes all of the animals listed in section 39-26-716 (3)(a), C.R.S.

Therefore, the sales and use tax exemption in section 39-26-716 (4)(a), C.R.S., renders the narrower use tax exemption in section 39-26-716 (3)(a), C.R.S., redundant. As a redundant provision, section 39-26-716 (3)(a), C.R.S., should be removed.

**4. Separate sales and use tax exemptions.**

There are three areas in which the statutes separate the exemptions from sales and use taxes for the same product or purchases. The separation of the exemptions can lead to conflicts or disparities between the exemptions and create confusion. Therefore, in each area, the exemptions should be placed together.

**4.1. Sales and use tax exemptions for the sale and use of special fuel in the operation of farm vehicles.**

Section 39-26-716 (2)(a), C.R.S., creates a sales tax exemption for the sale of special fuel used for the operation of farm vehicles.

S:\LLS\SRC\Memos\2021\LLS 21-0726 Memo (Special Fuels Farm Equipment and Livestock Tax Exemptions).docx

**39-26-716. Agriculture and livestock - special fuels - definitions. (2)**

The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) The sale of special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

Section 39-26-715 (2)(a)(I), C.R.S., in relevant part, creates a use tax exemption for the storage, use, or consumption of special fuel used for the operation of farm vehicles.

**39-26-715. Fuel and oil - definitions. (2)** The following are exempt from taxation under the provisions of part 2 of this article:

(a) (I) The storage, use, or consumption of gasoline that is taxed under the provisions of part 1 of article 27 of this title and all gasoline that is taxed under said provisions and the tax on which is refunded **and special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when the same are being used on farms or ranches;** except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a tax was collected pursuant to the provisions of part 2 of this article prior to January 1, 1989, shall not be exempt. **(Emphasis Added.)**

The sales tax exemption in 39-26-716 (2)(a), C.R.S., and the use tax exemption in 39-26-715 (2)(a)(I), C.R.S., apply to the same fuel being used for the same purpose. To prevent future disparity between the sales and use tax exemptions, these exemptions should be placed together in the combined sales and use tax exemptions in section 39-26-716 (4), C.R.S., and removed from sections 39-26-715 (2)(a)(I) and 39-26-716 (2)(a), C.R.S.

**4.2. Sales and use tax exemptions for the sale, purchase, use, or consumption of farm equipment.**

Section 39-26-716 (2)(b), C.R.S., creates a sales tax exemption for the sale and purchase of farm equipment. Section 39-26-716 (3)(b), C.R.S., creates a use tax exemption for the sale and purchase of farm equipment.

**39-26-716. Agriculture and livestock - special fuels - definitions. (2)**

The following shall be exempt from taxation under the provisions of part 1 of this article:

(b) All sales and purchases of farm equipment;

(3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(b) The storage, use, or consumption of farm equipment;

The sales tax exemption in 39-26-716 (2)(b), C.R.S., and the use tax exemption in 39-26-716 (3)(b), C.R.S., both apply to farm equipment. To prevent future disparity between the sales and use tax exemptions, these exemptions should be placed together in the combined sales and use tax exemptions in section 39-26-716 (4), C.R.S., and removed from sections 39-26-716 (2)(b) and 39-26-716 (3)(b), C.R.S.

#### **4.3. Sales and use tax exemptions for certain farm equipment under lease or contract.**

Section 39-26-716 (2)(c), C.R.S., creates a sales tax exemption for certain farm equipment under lease or contract. Section 39-26-716 (3)(c), C.R.S., creates a use tax exemption for the same farm equipment.

**39-26-716. Agriculture and livestock - special fuels - definitions.** (2) The following shall be exempt from taxation under the provisions of part 1 of this article:

(c) (I) Any farm equipment under lease or contract, if the fair market value of the equipment is at least one thousand dollars and the equipment is rented or leased for use primarily and directly in any farm operation.

(II) The lessor or seller of such farm equipment shall obtain a signed affidavit from the lessee, renter, or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation.

(3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(c) (I) Any farm equipment under lease or contract if the fair market value of such equipment is at least one thousand dollars and the equipment is rented or leased for storage, use, or consumption primarily and directly in any farm operation.

(II) The lessor shall obtain a signed affidavit from the lessee or renter affirming that the farm equipment will be stored, used, or consumed primarily and directly in a farm operation.

There are minor differences between sections 39-26-716 (2)(c) and 39-26-716 (3)(c), C.R.S., because section 39-26-716 (2)(c), C.R.S., was amended in House Bill 00-1162, but section 39-26-716 (3)(c), C.R.S., was not. These differences are non-substantive and the two sections both apply to farm equipment used "primarily and directly in any farm operation". Therefore, to prevent future disparity between the sales and use tax exemptions, these exemptions should be placed together in the combined sales and use tax exemptions in section 39-26-716 (4), C.R.S., and removed from sections 39-26-716 (2)(c) and 39-26-716 (3)(c), C.R.S.



## **Statutory Charge<sup>2</sup>**

The SRC is tasked with recommending legislation "to effect such changes in the law as [the SRC] deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The unused definition of "agricultural compounds" in section 39-26-716 (1)(a), C.R.S., is an antiquated and redundant rule of law. The unnecessary inclusion of "poultry" in the sales and use tax exemption for "livestock" in section 39-26-716 (4)(c), C.R.S., is also a redundant rule of law. The unnecessary separation of the sales and use tax exemptions in sections 39-26-715 (2)(a)(I) and 39-26-716 (2) and (3), C.R.S., can lead to redundant or contradictory rules of law. Thus, the removal of the definition of "agricultural compounds" in section 39-26-716 (1)(a), C.R.S.; the removal of the word "poultry" in the sales and use tax exemption for "livestock" in section 39-26-716 (4)(c), C.R.S.; and the reorganization of the sales and use tax exemptions for special fuels, farm equipment and livestock all fall within the SRC's charge. In addition, such repeals and reorganization will shorten the length of the statutes.

## **Proposed Bill**

The attached bill draft amends sections 39-26-715 and 39-26-716, C.R.S. as described in this memorandum.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.3.21

DRAFT

LLS NO. 21-0726.01 Pierce Lively x2059

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Special Fuel Farm Equipment Sales Use Tax"

**A BILL FOR AN ACT**

101      **CONCERNING NONSUBSTANTIVE MODIFICATIONS TO SALES AND USE**  
102              **TAX EXEMPTIONS, AND, IN CONNECTION THEREWITH,**  
103              **REORGANIZING SALE AND USE TAX EXEMPTIONS FOR**  
104              **AGRICULTURE, LIVESTOCK, AND SPECIAL FUELS.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill removes an unused definition of "agricultural compounds" and a redundant reference to a sales and use tax exemption for poultry and livestock. The bill also

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

reorganizes special fuel and farm equipment sales and use tax exemptions so that they are in the same location.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-26-715, **amend**  
3 (2) introductory portion and (2)(a)(I) as follows:

4 **39-26-715. Fuel and oil - definitions.** (2) The following are  
5 exempt from taxation under the provisions of part 2 of this ~~article~~  
6 ARTICLE 26:

7 (a) (I) The storage, use, or consumption of gasoline that is taxed  
8 under the provisions of part 1 of article 27 of this ~~title~~ TITLE 39 and all  
9 gasoline that is taxed under said provisions and the tax on which is  
10 refunded; ~~and special fuel, as defined in section 39-27-101 (29), used for~~  
11 ~~the operation of farm vehicles when the same are being used on farms or~~  
12 ~~ranches;~~ except that aviation fuel used in turbo-propeller or jet engine  
13 aircraft and upon which a tax was collected pursuant to the provisions of  
14 part 2 of this ~~article~~ ARTICLE 26 prior to January 1, 1989, shall not be  
15 exempt.

16 **SECTION 2.** In Colorado Revised Statutes, 39-26-716, **amend**  
17 (4) introductory portion, (4)(b), and (4)(c); **repeal** (1)(a), (2), and (3); and  
18 **add** (4)(d), (4)(e), and (4)(f) as follows:

19 **39-26-716. Agriculture and livestock - special fuels -**  
20 **definitions.** (1) For purposes of this section, unless the context otherwise  
21 requires:

22 (a) ~~"Agricultural compounds" means:~~

23 ~~(I) Insecticides, fungicides, growth-regulating chemicals,~~  
24 ~~enhancing compounds, vaccines, and hormones;~~

25 ~~(H) Drugs, whether dispensed in accordance with a prescription~~

1     ~~or not, that are used for the prevention or treatment of disease or injury~~  
2     ~~in livestock; and~~

3             ~~(HH) Animal pharmaceuticals that have been approved by the food~~  
4     ~~and drug administration.~~

5             ~~(2) The following shall be exempt from taxation under the~~  
6     ~~provisions of part 1 of this article:~~

7             ~~(a) The sale of special fuel, as defined in section 39-27-101 (29),~~  
8     ~~used for the operation of farm vehicles when such vehicles are being used~~  
9     ~~on farms and ranches;~~

10            ~~(b) All sales and purchases of farm equipment;~~

11            ~~(c) (I) Any farm equipment under lease or contract, if the fair~~  
12     ~~market value of the equipment is at least one thousand dollars and the~~  
13     ~~equipment is rented or leased for use primarily and directly in any farm~~  
14     ~~operation.~~

15            ~~(H) The lessor or seller of such farm equipment shall obtain a~~  
16     ~~signed affidavit from the lessee, renter, or purchaser affirming that the~~  
17     ~~farm equipment will be used primarily and directly in a farm operation.~~

18            ~~(d) and (e) Repealed.~~

19            ~~(3) The following shall be exempt from taxation under the~~  
20     ~~provisions of part 2 of this article:~~

21            ~~(a) The storage and use of neat cattle, sheep, lambs, swine, and~~  
22     ~~goats within this state, or the storage and use within this state of mares~~  
23     ~~and stallions kept, held, and used for breeding purposes only;~~

24            ~~(b) The storage, use, or consumption of farm equipment;~~

25            ~~(c) (I) Any farm equipment under lease or contract if the fair~~  
26     ~~market value of such equipment is at least one thousand dollars and the~~  
27     ~~equipment is rented or leased for storage, use, or consumption primarily~~

1 ~~and directly in any farm operation.~~

2 ~~(H) The lessor shall obtain a signed affidavit from the lessee or~~  
3 ~~renter affirming that the farm equipment will be stored, used, or~~  
4 ~~consumed primarily and directly in a farm operation.~~

5 ~~(d) and (e) Repealed.~~

6 (4) The following ~~shall be~~ ARE exempt from taxation under the  
7 provisions of parts 1 and 2 of this ~~article~~ ARTICLE 26:

8 (b) All sales and purchases of feed for livestock, all sales and  
9 purchases of seeds, and all sales and purchases of orchard trees and the  
10 storage, use, or consumption of such property; ~~and~~

11 (c) All sales and purchases of straw and other bedding for use in  
12 the care of livestock ~~or poultry~~ and the storage, use, or consumption of  
13 straw and other bedding for use in the care of livestock; ~~or poultry~~; AND

14 (d) THE SALE OF SPECIAL FUEL, AS DEFINED IN SECTION 39-27-101  
15 (29), USED FOR THE OPERATION OF FARM VEHICLES WHEN SUCH VEHICLES  
16 ARE BEING USED ON FARMS AND RANCHES AND THE STORAGE, USE, OR  
17 CONSUMPTION OF SUCH SPECIAL FUEL;

18 (e) ALL SALES AND PURCHASES OF FARM EQUIPMENT AND THE  
19 STORAGE, USE, OR CONSUMPTION OF FARM EQUIPMENT; AND

20 (f) (I) ANY FARM EQUIPMENT UNDER LEASE OR CONTRACT, IF THE  
21 FAIR MARKET VALUE OF THE EQUIPMENT IS AT LEAST ONE THOUSAND  
22 DOLLARS AND THE EQUIPMENT IS RENTED OR LEASED FOR USE PRIMARILY  
23 AND DIRECTLY IN ANY FARM OPERATION.

24 (II) THE LESSOR OR SELLER OF SUCH FARM EQUIPMENT SHALL  
25 OBTAIN A SIGNED AFFIDAVIT FROM THE LESSEE, RENTER, OR PURCHASER  
26 AFFIRMING THAT THE FARM EQUIPMENT WILL BE USED PRIMARILY AND  
27 DIRECTLY IN A FARM OPERATION.

1           **SECTION 3.** In Colorado Revised Statutes, 29-2-105, **amend**  
2           (1)(d)(I)(F) as follows:

3           **29-2-105. Contents of sales tax ordinances and proposals.**

4           (1) The sales tax ordinance or proposal of any incorporated town, city,  
5           or county adopted pursuant to this article 2 shall be imposed on the sale  
6           of tangible personal property at retail or the furnishing of services, as  
7           provided in subsection (1)(d) of this section. Any countywide or  
8           incorporated town or city sales tax ordinance or proposal shall include the  
9           following provisions:

10           (d) (I) A provision that the sale of tangible personal property and  
11           services taxable pursuant to this article 2 shall be the same as the sale of  
12           tangible personal property and services taxable pursuant to section  
13           39-26-104, except as otherwise provided in this subsection (1)(d). The  
14           sale of tangible personal property and services taxable pursuant to this  
15           article 2 shall be subject to the same sales tax exemptions as those  
16           specified in part 7 of article 26 of title 39; except that the sale of the  
17           following may be exempted from a town, city, or county sales tax only by  
18           the express inclusion of the exemption either at the time of adoption of  
19           the initial sales tax ordinance or resolution or by amendment thereto:

20           (F) The exemption for sales of farm equipment and farm  
21           equipment under lease or contract specified in ~~section 39-26-716 (2)(b)~~  
22           ~~and (2)(c)~~ SECTION 39-26-716 (4)(e) AND (4)(f). The express inclusion of  
23           the exemption by a town, city, or county before August 2, 2019, does not  
24           exempt from the town, city, or county sales tax any visual, electronic  
25           identification, or matched pair ear tags and electronic identification  
26           readers used to scan ear tags that are used by a farm operator to identify  
27           or track food animals, including animals used for food or in the

1 production of food, that were added to the definition of "farm equipment"  
2 set forth in section 39-26-716 (1)(d) by House Bill 19-1162, enacted in  
3 2019, and thereby exempted from state sales and use taxes but such a  
4 town, city, or county may expressly exempt such items by a subsequent  
5 amendment to its sales tax ordinance or resolution.

6 **SECTION 4. Act subject to petition - effective date.** This act  
7 takes effect at 12:01 a.m. on the day following the expiration of the  
8 ninety-day period after final adjournment of the general assembly; except  
9 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
10 of the state constitution against this act or an item, section, or part of this  
11 act within such period, then the act, item, section, or part will not take  
12 effect unless approved by the people at the general election to be held in  
13 November 2022 and, in such case, will take effect on the date of the  
14 official declaration of the vote thereon by the governor.

# **OFFICE OF LEGISLATIVE LEGAL SERVICES**

**COLORADO GENERAL ASSEMBLY**

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**TEL: 303-866-2045 FAX: 303-866-4157**

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## **MEMORANDUM<sup>1</sup>**

**TO:** Statutory Revision Committee

**FROM:** Sarah Lozano, Office of Legislative Legal Services

**DATE:** February 19, 2021

**SUBJECT:** Repeal of an enterprise zone child care tax credit applicable to tax years prior to 1999

### **Summary**

Section 39-30-103.5 (2), C.R.S., allows a taxpayer who makes a contribution to promote child care in an enterprise zone to claim a state tax credit for a percentage of their contribution. However, this credit is only applicable to tax years prior to 1999, and there is currently an applicable statewide tax credit for contributions to promote child care in section 39-22-121 (1.5), C.R.S. Therefore, section 39-30-103.5 (2), C.R.S., should be repealed. The Department of Revenue and the Office of Legislative Legal Services identified this outdated provision.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.



## Analysis

The applicable credit is codified in section 39-30-103.5 (2), C.R.S. This credit should be repealed because it only applies to the 1999 income tax year and there is another applicable statewide credit currently in effect for contributions to promote child care.

**39-30-103.5. Credit against tax – contributions to enterprise zone administrators to implement economic development plans.** (2) (a) For income tax years commencing prior to January 1, 1999, monetary or in-kind contributions to promote child care in enterprise zones shall be deemed to be for the purpose of implementing the economic development plan for the enterprise zone and shall include but shall not be limited to the following types of contributions:

(I) Donating money, real estate, or property to the enterprise zone for the establishment of a child care facility;

(II) Donating money to the enterprise zone to establish a grant or loan program for a parent or parents requiring financial assistance for child care;

(III) Pooling moneys of several businesses and donating such moneys to the enterprise zone for the establishment of a child care facility;

(IV) Donating money to the enterprise zone for the training of child care providers; and

(V) Donating money, services, or equipment to the enterprise zone for the establishment of an information dissemination program to provide information and referral services to assist a parent or parents in obtaining child care.

(b) Notwithstanding any other provision to the contrary, nothing in this subsection (2) shall be construed to limit the ability of a taxpayer to claim a credit under this subsection (2) for contributions made on or after January 1, 1999, pursuant to the terms of an agreement entered into prior to such date between the taxpayer and an enterprise zone administrator.

## Statutory Charge<sup>2</sup>

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes

law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The repeal of section 39-30-103.5 (2), C.R.S., fits within the SRC's charge because the revisions would repeal a credit that is no longer in effect and eliminate a redundancy within the C.R.S.

## **Proposed Bill**

The attached bill repeals section 39-30-103.5 (2), C.R.S.

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in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.10.21

DRAFT

LLS NO. 21-0725.01 Sarah Lozano x3858

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Enter Zone Child Care Income Tax Credit"

**DEADLINES:** File by: 2/25/2021

**A BILL FOR AN ACT**

101 **CONCERNING THE REPEAL OF THE ENTERPRISE ZONE CHILD CARE**  
102 **CONTRIBUTIONS INCOME TAX CREDIT FOR INCOME TAX YEARS**  
103 **COMMENCING PRIOR TO JANUARY 1, 1999.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill repeals the enterprise zone child care contributions income tax credit that was available for income tax years commencing prior to January 1, 1999.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-30-103.5, **repeal**  
3 (2) as follows:

4 **39-30-103.5. Credit against tax - contributions to enterprise**  
5 **zone administrators to implement economic development plans.**

6 ~~(2) (a) For income tax years commencing prior to January 1, 1999,~~  
7 ~~monetary or in-kind contributions to promote child care in enterprise~~  
8 ~~zones shall be deemed to be for the purpose of implementing the~~  
9 ~~economic development plan for the enterprise zone and shall include but~~  
10 ~~shall not be limited to the following types of contributions:~~

11 ~~(I) Donating money, real estate, or property to the enterprise zone~~  
12 ~~for the establishment of a child care facility;~~

13 ~~(II) Donating money to the enterprise zone to establish a grant or~~  
14 ~~loan program for a parent or parents requiring financial assistance for~~  
15 ~~child care;~~

16 ~~(III) Pooling moneys of several businesses and donating such~~  
17 ~~moneys to the enterprise zone for the establishment of a child care~~  
18 ~~facility;~~

19 ~~(IV) Donating money to the enterprise zone for the training of~~  
20 ~~child care providers; and~~

21 ~~(V) Donating money, services, or equipment to the enterprise zone~~  
22 ~~for the establishment of an information dissemination program to provide~~  
23 ~~information and referral services to assist a parent or parents in obtaining~~  
24 ~~child care.~~

25 ~~(b) Notwithstanding any other provision to the contrary, nothing~~  
26 ~~in this subsection (2) shall be construed to limit the ability of a taxpayer~~  
27 ~~to claim a credit under this subsection (2) for contributions made on or~~

1 ~~after January 1, 1999, pursuant to the terms of an agreement entered into~~  
2 ~~prior to such date between the taxpayer and an enterprise zone~~  
3 ~~administrator.~~

4       **SECTION 2. Act subject to petition - effective date.** This act  
5 takes effect at 12:01 a.m. on the day following the expiration of the  
6 ninety-day period after final adjournment of the general assembly; except  
7 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
8 of the state constitution against this act or an item, section, or part of this  
9 act within such period, then the act, item, section, or part will not take  
10 effect unless approved by the people at the general election to be held in  
11 November 2022 and, in such case, will take effect on the date of the  
12 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Sarah Lozano, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Modifications to the state tax credit for contributions to promote child care

### Summary

Section 39-22-121, C.R.S., allows a taxpayer who makes a contribution to promote child care to claim a state tax credit for a percentage of their contribution. Section 39-22-121 (1), C.R.S., only applies to the 1999 income tax year, and allows a credit for monetary or in-kind contributions. Section 39-22-121 (1.5), C.R.S., added in 2000, is applicable to the income tax years prior to January 1, 2025, and only allows a credit for monetary contributions. Therefore, section 39-22-121 (1), C.R.S., should be repealed because it is only applicable to the 1999 income tax year and all references to in-kind contributions throughout section 39-22-121, C.R.S, should be removed because only monetary contributions currently qualify for a credit. The Department of Revenue and the Office of Legislative Legal Services identified this provision and related statutory defects.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

## Analysis

The applicable credits are codified in section 39-22-121 (1), C.R.S., and section 39-22-121 (1.5), C.R.S. The credit codified in section 39-22-121 (1), C.R.S., should be repealed because it only applies to the 1999 income tax year. Further, any reference to in-kind contributions throughout section 39-22-121, C.R.S., should be removed because the tax credit codified in section 39-22-121 (1.5), C.R.S., does not permit in-kind contributions:

**39-22-121. Credit for child care facilities - repeal.** (1) For the income tax year commencing on or after January 1, 1999, but prior to January 1, 2000, any taxpayer who makes a monetary or in-kind contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to twenty-five percent of the total value of the contribution except as otherwise provided in subsection (5) of this section.

(1.5) For income tax years commencing prior to January 1, 2025, any taxpayer who makes a monetary contribution to promote child care in the state is allowed a credit against the income tax imposed by this article 22 in an amount equal to fifty percent of the total value of the contribution except as otherwise provided in subsections (5) and (6.7) of this section.

## Statutory Charge<sup>2</sup>

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The repeal of section 39-22-121 (1), C.R.S., and removal any reference to in-kind contributions throughout section 39-22-121, C.R.S., fits within the SRC's charge because the revisions would repeal a credit that is no longer in effect and make the entire statute consistent with current law.

---

<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

## **Proposed Bill**

The attached bill repeals section 39-22-121 (1), C.R.S., and removes any reference to in-kind contributions within section 39-22-121, C.R.S.



## ADDENDUM A

**39-22-121. Credit for child care facilities – repeal.** (1) For the income tax year commencing on or after January 1, 1999, but prior to January 1, 2000, any taxpayer who makes a monetary or in-kind contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to twenty-five percent of the total value of the contribution except as otherwise provided in subsection (5) of this section.

(1.5) For income tax years commencing prior to January 1, 2025, any taxpayer who makes a monetary contribution to promote child care in the state is allowed a credit against the income tax imposed by this article 22 in an amount equal to fifty percent of the total value of the contribution except as otherwise provided in subsections (5) and (6.7) of this section.

(1.7) As used in this section, unless the context otherwise requires, "child care" means care provided to a child twelve years of age or younger.

(2) Monetary or in-kind contributions to promote child care in the state shall include the following types of contributions:

(a) Donating money, real estate, or property for the establishment or operation of a child care facility that uses the donation to provide child care, a child care program that is not a child care facility but provides child care services similar to those provided by a child care center, as defined in section 26-6-102 (5), C.R.S., or any other program that received donations for which a credit was allowed to the donor pursuant to this section for any income tax year that ended before January 1, 2004, in the state;

(b) Donating money to establish a grant or loan program for a parent or parents in the state requiring financial assistance for child care;

(c) Pooling moneys of several businesses and donating such moneys for the establishment of a child care facility in the state;

(d) Donating money for the training of child care providers in the state; and

(e) Donating money, services, or equipment for the establishment of an information dissemination program in the state to provide information and referral services to assist a parent or parents in obtaining child care.

(3) In no event shall credits be allowed pursuant to this section for contributions that are not directly related to promoting child care in the state or for contributions that a taxpayer makes to a child care facility in which the taxpayer or a person related to the taxpayer has a financial interest.

(4) When a contribution for which a credit is claimed pursuant to this section is made to a for-profit business, such contribution shall be directly invested by the business for the acquisition or improvement of facilities,

equipment, or services, including the improvement of staff salaries, staff training, or the quality of child care.

(5) The credit allowed by this section shall not exceed one hundred thousand dollars or the taxpayer's actual income tax liability for the tax year for which the credit is claimed, whichever is less. In-kind contributions shall not exceed fifty percent of the total amount of the credit claimed for a given tax year.

(6) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(6.5) For the purposes of this section, "child care facility" means:

(a) Any facility required to be licensed pursuant to part 1 of article 6 of title 26, C.R.S., and shall include, but is not limited to:

- (I) Child care centers;
- (II) Child placement agencies;
- (III) Family child care homes;
- (IV) Foster care homes;
- (V) Homeless youth shelters;
- (VI) Residential child care facilities; and
- (VII) Secure residential treatment centers; and

(b) For income tax years commencing on and after January 1, 2013, any approved facility school as such term is defined in section 22-2-402 (1), C.R.S., that is also affiliated with a licensed or certified hospital in the state and is also a nonprofit organization; except that, subject to the limitations specified in subsections (5) and (6) of this section and paragraph (d) of subsection (6.7) of this section, any credit for a monetary contribution made to an approved facility school in the income tax year commencing on or after January 1, 2013, but before January 1, 2014, shall not be claimed until the income tax year commencing on or after January 1, 2014.

(6.7) (a) If the revenue estimate prepared by the staff of the legislative council in December 2010 and December 2011 indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year following the year in which the estimate is prepared; except that any taxpayer who would have been eligible to claim a credit pursuant to this section in the income tax year in which the credit is not allowed shall be allowed to claim the

credit earned in such income tax year in the next income tax year in which the estimate indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) The department of revenue shall, through its website, specify on or before January 1, 2011, and January 1, 2012, whether the credit authorized in this section shall be allowed for a given income tax year pursuant to paragraph (a) of this subsection (6.7).

(c) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2013, a taxpayer may claim no more than fifty percent of any credit allowed pursuant to subsection (1.5) of this section and paragraph (a) of this subsection (6.7) and any credit carried forward pursuant to subsection (6) of this section. The remainder of all credits allowed as described in this paragraph (c) shall be carried forward to the income tax year commencing January 1, 2014.

(d) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2014, a taxpayer may claim no more than seventy-five percent of any credit allowed pursuant to subsection (1.5) of this section and any credit carried forward pursuant to subsection (6) of this section and paragraph (c) of this subsection (6.7). The remainder of all credits allowed as described in this paragraph (d) shall be carried forward to the income tax year commencing January 1, 2015.

(7) This section is repealed, effective January 1, 2032.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.4.21

DRAFT

LLS NO. 21-0724.01 Sarah Lozano x3858

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Mod To Child Care Tax Credit To Address Defects"

**DEADLINES:** File by: 2/25/2021

**A BILL FOR AN ACT**

101 **CONCERNING THE ELIMINATION OF OBSOLETE PROVISIONS OF THE**  
102 **CHILD CARE CONTRIBUTION STATE INCOME TAX CREDIT.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** House Bill 00-1351, enacted in 2000, removed the provision permitting a child care contribution income tax credit for an in-kind contribution. Accordingly, the bill removes all references in the statute to an in-kind contribution. The bill also repeals an obsolete provision that is only applicable to the income tax year that commenced on or after January 1, 1999, but prior to January 1, 2000.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-121, **amend**  
3 (2) introductory portion, (2)(a), (2)(c), (2)(e), and (5); and **repeal** (1) as  
4 follows:

5 **39-22-121. Credit for child care facilities - repeal.** (1) ~~For the~~  
6 ~~income tax year commencing on or after January 1, 1999, but prior to~~  
7 ~~January 1, 2000, any taxpayer who makes a monetary or in-kind~~  
8 ~~contribution to promote child care in the state shall be allowed a credit~~  
9 ~~against the income tax imposed by this article in an amount equal to~~  
10 ~~twenty-five percent of the total value of the contribution except as~~  
11 ~~otherwise provided in subsection (5) of this section.~~

12 (2) Monetary ~~or in-kind~~ contributions to promote child care in the  
13 state shall include the following types of contributions:

14 (a) Donating money ~~real estate, or property~~ for the establishment  
15 or operation of a child care facility that uses the donation to provide child  
16 care, a child care program that is not a child care facility but provides  
17 child care services similar to those provided by a child care center, as  
18 defined in section 26-6-102 (5), ~~C.R.S.~~, or any other program that  
19 received donations for which a credit was allowed to the donor pursuant  
20 to this section for any income tax year that ended before January 1, 2004,  
21 in the state;

22 (c) Pooling ~~moneys~~ MONEY of several businesses and donating  
23 ~~such moneys~~ THE MONEY for the establishment of a child care facility in  
24 the state;

25 (e) Donating money ~~services, or equipment~~ for the establishment  
26 of an information dissemination program in the state to provide

1 information and referral services to assist a parent or parents in obtaining  
2 child care.

3 (5) The credit allowed by this section shall not exceed one  
4 hundred thousand dollars or the taxpayer's actual income tax liability for  
5 the tax year for which the credit is claimed, whichever is less. ~~In-kind~~  
6 ~~contributions shall not exceed fifty percent of the total amount of the~~  
7 ~~credit claimed for a given tax year.~~

8 **SECTION 2. Act subject to petition - effective date.** This act  
9 takes effect at 12:01 a.m. on the day following the expiration of the  
10 ninety-day period after final adjournment of the general assembly; except  
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
12 of the state constitution against this act or an item, section, or part of this  
13 act within such period, then the act, item, section, or part will not take  
14 effect unless approved by the people at the general election to be held in  
15 November 2022 and, in such case, will take effect on the date of the  
16 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Ed DeCecco, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Correcting section 39-29-111, C.R.S.

### Summary

Section 39-29-111, C.R.S., relates to the withholding requirements that apply to disbursements to oil and gas interest owners. The section has several minor defects and an anachronism:

- A definition that is too narrow and redundant;
- Extraneous references to "oil shale";
- A cross-reference to a repealed subsection; and
- An obsolete reporting requirement.

The Department of Revenue and the Office of Legislative Legal Services identified the defects and anachronism.

### Analysis

Section 39-29-111 (1)(a), C.R.S., requires a producer or purchaser who disburses money to an oil and gas interest owner to withhold a portion of those funds and pay

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

the withheld amount to the Department of Revenue. There are several problems with this section.

**1. The definition "producer" is inconsistent with the statute and has extraneous references to "oil shale".**

Under section 39-29-111 (1)(a), C.R.S., "[e]very producer or purchaser who disburses funds that are owed to any person owning a working interest, a royalty interest, a production payment, or any other interest in any oil or gas produced in Colorado shall . . . withhold from the amount owed to such person an amount equal to one percent of the gross income from such interest...." For purposes of this provision, "producer" is defined in section 39-29-111 (3), C.R.S., as "every person producing or extracting oil shale or oil and gas deposits located within this state or the first purchaser of oil shale or oil and gas produced from deposits located within this state." There are two problems with this definition.

First, the term "producer" includes a "first purchaser", but subsection (1)(a) already separately applies to a "purchaser." As such, applying the definition to subsection (1)(a), it redundantly requires a person producing or extracting, *a first purchaser*, and a *purchaser* to withhold amounts. Moreover, the definition narrows the statutory provision to apply to just "first purchasers," which is how the department has interpreted it, and not all purchasers. These defects can be remedied by expanding the defined term from "producer" to "producer or purchaser" so that the definition is in harmony with the subsection to which it applies.

Second, the definition includes extraneous references to "oil shale." As originally enacted in 1977,<sup>2</sup> section 39-29-111, C.R.S., required withholding related to oil shale. But that was removed from subsection (1) of the section in 1985.<sup>3</sup> The requirement only applies to those persons having an interest in "any oil or gas produced in Colorado." Moreover, the amount withheld is based on "gross income as defined in section 39-29-102 (3)(a)," which only applies to oil and gas, and not oil shale. This defect can be remedied by twice striking " oil shale or" from the definition.

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<sup>2</sup> H.B. 77-1076.

<sup>3</sup> H.B. 85-1126.



## **2. There is a cross-reference to a repealed provision.**

Section 39-29-111 (1)(a), C.R.S., requires producers and purchasers to pay the withheld amounts "to the department in the manner set forth in paragraph (b) of this subsection (1)." Subsection (1)(b) of the section, however, was repealed in House Bill 19-1256.<sup>4</sup> Prior to its repeal, subsection (1)(b) gave the Department of Revenue the authority to require electronic payments. The General Assembly repealed this provision in House Bill 19-1256 and replaced it with section 39-21-119.5, C.R.S., which mandated electronic filing for a number of taxes, including these withholding payments. This defect can be remedied by substituting a reference to the electronic filing provision in section 39-21-119.5 (4)(b), C.R.S.

## **3. There is an obsolete reporting requirement that applied prior to 2007.**

Section 39-29-111 (1)(a), C.R.S., established payment and filing requirements for producers and purchasers that applied prior to July 1, 2007. This provision is now obsolete, and can be repealed.

## **Statutory Charge<sup>5</sup>**

The proposed bill fits within the charge of the Statutory Revision Committee because it will modify or eliminate antiquated, redundant, and contradictory provisions of law.

## **Proposed Bill**

The attached bill corrects the defects in section 39-29-111, C.R.S.

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<sup>4</sup> See [http://leg.colorado.gov/sites/default/files/documents/2019A/bills/sl/2019a\\_sl\\_395.pdf](http://leg.colorado.gov/sites/default/files/documents/2019A/bills/sl/2019a_sl_395.pdf)

<sup>5</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

## ADDENDUM A

### **39-29-111. Withholding of income from oil and gas interest.**

(1) (a) Every producer or purchaser who disburses funds that are owed to any person owning a working interest, a royalty interest, a production payment, or any other interest in any oil or gas produced in Colorado shall, unless such production is exempt under section 39-29-105 (1) and the producer or purchaser has registered such exempt production with the department of revenue in accordance with rules promulgated by the department, withhold from the amount owed to such person an amount equal to one percent of the gross income from such interest, except for income accruing to the United States or the state of Colorado or to any political subdivision of the state of Colorado. The amount withheld shall be based on gross income as defined in section 39-29-102 (3)(a). On or before each March 1, June 1, September 1, and December 1 prior to July 1, 2007, the aggregate of all such amounts withheld during the prior calendar quarter shall be paid to the department; and, no later than such dates, a report covering the withholding of such amounts shall be filed with the department upon forms prescribed by the executive director. On the first day of each month beginning with July 1, 2007, the aggregate of all such amounts withheld during the calendar month that was three months prior thereto shall be paid to the department in the manner set forth in paragraph (b) of this subsection (1). Nothing in this section shall be so construed as to reduce the tax imposed by this article.

(b) Repealed.

(2) Every person making a return as required by section 39-29-112 may take credit for the amount withheld by the producer or the first purchaser against the tax shown to be due upon such return, and any overpayment shown on such return shall be refunded to the taxpayer.

(3) For the purposes of subsection (1) of this section, "producer" means every person producing or extracting oil shale or oil and gas deposits located within this state or the first purchaser of oil shale or oil and gas produced from deposits located within this state.

(4) On or before March 1 of each year, every producer or purchaser shall provide each person holding any interest pursuant to subsection (1) of this section with a statement of the amounts deducted and withheld pursuant to this section from disbursements made to such person during the preceding calendar year. Such statements shall be retained in the records of every producer or purchaser for a period of three years and shall be made available to the department of revenue upon the written request of the department.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.5.21

DRAFT

LLS NO. 21-0722.01 Ed DeCecco x4216

COMMITTEE BILL

Statutory Revision Committee

BILL TOPIC: "Fix Defects Related To Severance Withholdings"

A BILL FOR AN ACT

101 CONCERNING THE CORRECTION OF DEFECTS RELATED TO SEVERANCE  
102 TAX WITHHOLDINGS FROM A DISBURSEMENT TO AN OIL AND GAS  
103 INTEREST OWNER.

Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

Under current law, a producer or purchaser is required to withhold an amount from each disbursement made to an interest owner in any oil and gas produced in the state and pay this amount to the department of revenue. The bill fixes defects related to this law by:

- For purposes of electronic payments, replacing a

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

cross-reference to a repealed subsection with a reference to the current statutory requirement;

- Expanding the defined term "producer" to be "producer or purchaser" to eliminate a redundancy in the law; and
- Repealing extraneous references to "oil shale" from the definition.

The bill also repeals obsolete filing requirements that applied prior to July 1, 2007.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-29-111, **amend**  
3 (1)(a) and (3) as follows:

4 **39-29-111. Withholding of income from oil and gas interest.**

5 (1) (a) Every producer or purchaser who disburses funds that are owed  
6 to any person owning a working interest, a royalty interest, a production  
7 payment, or any other interest in any oil or gas produced in Colorado  
8 shall, unless such production is exempt under section 39-29-105 (1) and  
9 the producer or purchaser has registered such exempt production with the  
10 department of revenue in accordance with rules promulgated by the  
11 department, withhold from the amount owed to such person an amount  
12 equal to one percent of the gross income from such interest, except for  
13 income accruing to the United States or the state of Colorado or to any  
14 political subdivision of the state of Colorado. The amount withheld ~~shall~~  
15 ~~be~~ IS based on gross income as defined in section 39-29-102 (3)(a). ~~On or~~  
16 ~~before each March 1, June 1, September 1, and December 1 prior to July~~  
17 ~~1, 2007, the aggregate of all such amounts withheld during the prior~~  
18 ~~calendar quarter shall be paid to the department; and, no later than such~~  
19 ~~dates, a report covering the withholding of such amounts shall be filed~~  
20 ~~with the department upon forms prescribed by the executive director. On~~  
21 the first day of each month beginning with July 1, 2007, the aggregate of

1 all such amounts withheld during the calendar month that was three  
2 months prior thereto shall be paid to the department in the manner set  
3 forth in ~~paragraph (b) of this subsection (1)~~ SECTION 39-21-119.5 (4)(b).  
4 Nothing in this section shall be so construed as to reduce the tax imposed  
5 by this ~~article~~ ARTICLE 29.

6 (3) For the purposes of subsection (1) of this section, "producer  
7 OR PURCHASER" means every person producing or extracting ~~oil shale or~~  
8 oil and gas deposits located within this state or the first purchaser of ~~oil~~  
9 ~~shale or~~ oil and gas produced from deposits located within this state.

10 **SECTION 2. Act subject to petition - effective date.** This act  
11 takes effect at 12:01 a.m. on the day following the expiration of the  
12 ninety-day period after final adjournment of the general assembly; except  
13 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
14 of the state constitution against this act or an item, section, or part of this  
15 act within such period, then the act, item, section, or part will not take  
16 effect unless approved by the people at the general election to be held in  
17 November 2022 and, in such case, will take effect on the date of the  
18 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Esther van Mourik, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Accurate statutory references to the types of taxes administered by the department of revenue for purposes of administrative requirements.

### Summary

Section 39-21-102, C.R.S. accurately specifies the scope and applicability of article 21 of title 39, C.R.S., and establishes all the taxes that the department of revenue is responsible for administering. Sections 39-21-119 and 39-21-120, C.R.S., attempt to reference similar lists of taxes for specified methods of filing and paying taxes. However, some of the tax types are omitted in these sections, making these sections defective. Therefore, sections 39-21-119 and 39-21-120, C.R.S., should be amended to remove the references to the tax types so that section 39-21-102, C.R.S., controls instead. The Department of Revenue (department) identified this provision.

### Analysis

Section 39-21-119 (1)(a), C.R.S., prescribes the date a return is deemed filed and the date a payment is deemed made for various tax types administered by the department. Section 39-21-120 (1), C.R.S., permits alternative methods for filing, signing, and transmitting returns for various tax types administered by the department. These sections reference many of the taxes and fees the department administers, but omits

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

others. Because the applicability of the entire article 21 is properly set forth in section 39-21-102, C.R.S., it is unnecessary to include language in sections 39-21-119 and 39-21-120, C.R.S., regarding the types of taxes to which the methods of filing apply. Amending these sections to remove the incomplete references to the types of taxes administered by the department will also prevent future omissions.

## **Statutory Charge<sup>2</sup>**

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify . . . contradictory rules of law." The amendments of sections 39-21-119 and 39-21-120, C.R.S., fit within the SRC's charge because they modify contradictory rules of law.

## **Proposed Bill**

The attached bill amends sections 39-21-119 and 39-21-120, C.R.S., so that section 39-21-102, C.R.S., controls instead.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

## ADDENDUM A

**39-21-102. Scope.** (1) Unless otherwise indicated, the provisions of this article 21 apply to the taxes or fees imposed by articles 22 to 35 of this title 39 and article 60 of title 34, section 21 of article X of the state constitution, article 3 of title 42, part 5 of article 3 of title 44, articles 11 and 20 of title 30, article 4 of title 43, article 2 of title 40, and part 2 of article 20 of title 8.

(2) The provisions of this article 21 apply to the taxes imposed pursuant to articles 3, 4, and 32 of title 44, but only to the extent that the provisions of this article 21 are not inconsistent with the provisions of articles 3, 4, and 32 of title 44.

(3) Repealed.

(4) The provisions of this article apply to grants authorized pursuant to article 31 of this title to the extent that such provisions are not inconsistent with the provisions of said article 31.

(5) The provisions of this article apply to the taxes or fees imposed pursuant to articles 1, 2, 11, and 25 of title 29, C.R.S., but only to the extent that the provisions of this article are not inconsistent with the provisions of articles 1, 2, 11, and 25 of title 29, C.R.S.

(6) The provisions of this article apply to the taxes or fees imposed pursuant to title 32, C.R.S., but only to the extent that the provisions of this article are not inconsistent with the provisions of title 32, C.R.S.



## ADDENDUM B

**39-21-119. Filing with executive director - when deemed to have been made.** (1) (a) Any report, claim, tax return, statement, or other document required or authorized under articles 22, 26, 28, and 29 of this title and article 3 of title 42, C.R.S., to be filed with or any payment made to the executive director that is transmitted through the United States mail shall be deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed.

(b) Any such document which is mailed, but not received by the executive director, or is received and the cancellation mark is not legible, or is erroneous or omitted shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mails on or before the date due for filing. In such cases of nonreceipt of a document by the executive director, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by the executive director of the failure to receive such document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States postal service of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the executive director, to the state officer or state agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

(4) The date of receipt of returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored under the alternative methods provided in section 39-21-120 shall be determined pursuant to rules and regulations adopted by the executive director pursuant to section 39-21-112 (1).

## ADDENDUM C

**39-21-120. Signature and filing alternatives for tax returns.** (1) For the purposes of any returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored pursuant to articles 22 to 31 of this title 39, article 60 of title 34, article 3 of title 42, and articles 3 and 4 of title 44, the executive director may prescribe alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns or other documents pursuant to the statutory provisions of this article 21 and other articles referenced in this article 21. The executive director shall adopt rules as may be appropriate to define and implement acceptable alternatives for each article within the scope of this section.

(2) Any return or other document signed, subscribed, or verified under any method adopted under subsection (1) of this section shall be treated for all purposes, including penalties for perjury, in the same manner as if verified by signature.

(3) To enable alternative filing of tax returns, the executive director is hereby authorized to contract for communications services with governmental or private contractors. Such contractors shall be subject to the provisions of section 39-21-113 (4), and each contract entered into pursuant to this subsection (3) shall set forth the provisions of section 39-21-113 (4) and (6).

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.8.21

DRAFT

LLS NO. 21-0723.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Accurate References For DOR Tax Administration"

**A BILL FOR AN ACT**

101      **CONCERNING THE ACCURATE STATUTORY REFERENCE TO THE TYPES**  
102                      **OF TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE FOR**  
103                      **PURPOSES OF ADMINISTRATIVE REQUIREMENTS.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** Section 39-21-102, C.R.S., accurately specifies the scope and applicability of article 21 of title 39, C.R.S., and establishes all the taxes that the department of revenue is responsible for administering. However, sections 39-21-119 and 39-21-120, C.R.S., attempt to reference similar lists of taxes in order to

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

specify authorized methods of filing and paying the taxes. Unfortunately, some of the tax types are omitted in these sections, making these sections defective. The bill removes the references to the tax types in sections 39-21-119 and 39-21-120, C.R.S., so that section 39-21-102, C.R.S., controls instead.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 39-21-119, **amend** (1)(a) as follows:

**39-21-119. Filing with executive director - when deemed to have been made.** (1) (a) Any report, claim, tax return, statement, or other document required or authorized ~~under articles 22, 26, 28, and 29 of this title and article 3 of title 42, C.R.S.,~~ to be filed with or any payment made to the executive director that is transmitted through the United States mail ~~shall be~~ is deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed.

**SECTION 2.** In Colorado Revised Statutes, 39-21-120, **amend** (1) as follows:

**39-21-120. Signature and filing alternatives for tax returns.** (1) ~~For the purposes of any returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored pursuant to articles 22 to 31 of title 39, article 60 of title 34, article 3 of title 42, and articles 3 and 4 of title 44,~~ The executive director may prescribe alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns or other documents pursuant to the statutory provisions of this article 21 and other articles referenced in this article 21. The executive director shall adopt rules as may be appropriate to define and implement acceptable alternatives for each

1 article within the scope of this section.

2           **SECTION 3. Act subject to petition - effective date.** This act  
3 takes effect at 12:01 a.m. on the day following the expiration of the  
4 ninety-day period after final adjournment of the general assembly; except  
5 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
6 of the state constitution against this act or an item, section, or part of this  
7 act within such period, then the act, item, section, or part will not take  
8 effect unless approved by the people at the general election to be held in  
9 November 2022 and, in such case, will take effect on the date of the  
10 official declaration of the vote thereon by the governor.

# **OFFICE OF LEGISLATIVE LEGAL SERVICES**

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## **MEMORANDUM<sup>1</sup>**

**TO:** Statutory Revision Committee

**FROM:** Esther van Mourik, Office of Legislative Legal Services

**DATE:** February 19, 2021

**SUBJECT:** Modifications to the sales and use tax statutes in order to address certain defects and anachronisms.

### **Summary**

Article 26 of title 39, C.R.S., sets forth all of the sales and use tax statutes. There are several defects and anachronisms in these statutes identified by the Department of Revenue that need addressing.

### **Analysis**

There are several miscellaneous defects and anachronisms related to article 26 that were identified by the Department of Revenue and should be resolved, including:

- Section 39-26-720, C.R.S., includes incorrect cross references to the definition of "bingo equipment." The definitions related to bingo were relocated as a result of Senate Bill 17-232. The statutory references were not correctly

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changed for purposes of the bingo equipment sales and use tax exemption. These cross references should be updated.

- The description of a sales tax exemption in section 29-2-105, C.R.S., contains an outdated reference to "low-emitting motor vehicles." The exemption, however, is no longer conditioned on the motor vehicle being "low-emitting." The phrase "low-emitting" should be eliminated from the description.
- House Bill 20-1023 provided for the conditional repeal of section 39-26-105.3, C.R.S., to be effectively replaced with section 39-26-105.2, C.R.S. Section 39-26-204.5, C.R.S., a use tax statute, makes reference to section 39-26-105.2, C.R.S., but a conforming amendment to that section was not included in House Bill 20-1023. The same conditional repeal should be added to the use tax statute, along with the same hold harmless provision for retailers as is provided in section 39-26-105.2, C.R.S.
- Section 39-26-110, C.R.S., specifies that a retailer doing business in two or more locations in Colorado may file one return that will cover all business locations. This statute was added as part of the "Emergency Retail Sales Tax Act of 1935" and has not been amended since, only moved around. With the advent of home rule taxing jurisdictions that can collect and administer their own sales and use tax, it is no longer possible that retailers doing business in more than one location in Colorado can file only one return to report all sales and use taxes collected because the Department of Revenue no longer administers all sales and use taxes in the state. Section 39-26-110, C.R.S., is outdated and should be repealed.
- The definition of "food" in section 39-26-707, C.R.S., contains an incorrect cross reference to a federal statute. The definition of "food" in federal law is no longer located in 7 U.S.C. sec. 2012 (g). It is better to include a more general cross reference to all of 7 U.S.C. sec. 2012 instead of a specific subsection to allow for later amendments to that section.

## **Statutory Charge<sup>2</sup>**

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes

law as it deems necessary in order to modify . . . contradictory rules of law." The amendments to these various sections in article 26 of title 39, C.R.S., fit within the SRC's charge because they correct defects and anachronisms in the law.

## **Proposed Bill**

The attached proposed bill addresses the defects described above by updating the cross reference for the definition of "bingo equipment", removing the words "low-emitting" from the description of the sales tax exemption in section 29-2-105, C.R.S., adding the missing conforming amendment to section 39-26-204.5, C.R.S., repealing the provision allowing a retailer doing business in two or more locations to file one return, and updating the reference to the federal definition of "food."

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in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

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## ADDENDUM A

**39-26-720. Bingo equipment.** (1) All sales of equipment, as defined in section 12-9-102 (5), C.R.S., to a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 1 of this article.

(2) The storage, use, or consumption of equipment, as defined in section 12-9-102 (5), C.R.S., by a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 2 of this article.

## ADDENDUM B

**29-2-105. Contents of sales tax ordinances and proposals.** (1) The sales tax ordinance or proposal of any incorporated town, city, or county adopted pursuant to this article 2 shall be imposed on the sale of tangible personal property at retail or the furnishing of services, as provided in subsection (1)(d) of this section. Any countywide or incorporated town or city sales tax ordinance or proposal shall include the following provisions:

(a) A provision imposing a tax on the sale of tangible personal property at retail or the furnishing of services, as provided in paragraph (d) of this subsection (1);

(b) A provision that, for the purpose of the sales tax ordinance or proposal enacted in accordance with this article 2, all retail sales are sourced as specified in section 39-26-104 (3);

(c) A provision that the amount subject to tax shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S.;

(d) (I) A provision that the sale of tangible personal property and services taxable pursuant to this article 2 shall be the same as the sale of tangible personal property and services taxable pursuant to section 39-26-104, except as otherwise provided in this subsection (1)(d). The sale of tangible personal property and services taxable pursuant to this article 2 shall be subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39; except that the sale of the following may be exempted from a town, city, or county sales tax only by the express inclusion of the exemption either at the time of adoption of the initial sales tax ordinance or resolution or by amendment thereto:

(A) The exemption for sales of machinery or machine tools specified in section 39-26-709 (1), C.R.S., other than machinery or machine tools used in the processing of recovered materials by a business listed in the inventory prepared by the department of public health and environment pursuant to section 30-20-122 (1)(a)(V), C.R.S.;

(A.5) The exemption for sales of machinery or machine tools specified in section 39-26-709 (1), C.R.S., used in the processing of recovered materials by a business listed in the inventory prepared by the department of public health and environment pursuant to section 30-20-122 (1)(a)(V), C.R.S.;

(B) The exemption for sales of electricity, coal, wood, gas, fuel oil, or coke specified in section 39-26-715 (1)(a)(II), C.R.S.;

(C) The exemption for sales of food specified in section 39-26-707 (1)(e), C.R.S.;

(D) The exemption for vending machine sales of food specified in section 39-26-714 (2), C.R.S.;

(E) The exemption for sales by a charitable organization specified in section 39-26-718 (1)(b), C.R.S.;

(F) The exemption for sales of farm equipment and farm equipment under lease or contract specified in section 39-26-716 (2)(b) and (2)(c). The express inclusion of the exemption by a town, city, or county before August 2, 2019, does not exempt from the town, city, or county sales tax any visual, electronic identification, or matched pair ear tags and electronic identification readers used to scan ear tags that are used by a farm operator to identify or track food animals, including animals used for food or in the production of food, that were added to the definition of "farm equipment" set forth in section 39-26-716 (1)(d) by House Bill 19-1162, enacted in 2019, and thereby exempted from state sales and use taxes but such a town, city, or county may expressly exempt such items by a subsequent amendment to its sales tax ordinance or resolution.

(G) The exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.;

(H) Repealed.

(I) The exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles as specified in section 39-26-723, C.R.S.;

(J) The exemption for sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source specified in section 39-26-724, C.R.S.; except that this sub-subparagraph (J) shall not apply to any incorporated town, city, or county that adopted the exemption specified in sub-subparagraph (A) of this subparagraph (I) prior to May 27, 2008;

(K) The exemption for sales that benefit a Colorado school specified in section 39-26-725, C.R.S.;

(L) The exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in section 39-26-718 (1)(c), C.R.S.;

(M) The exemption for sales of property for use in space flight specified in section 39-26-728, C.R.S.;

(N) Repealed.

(O) The exemption for retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 as specified in section 39-26-729.

(P) The exemption for manufactured homes set forth in section 39-26-721 (3).

(II) Repealed.

(III) In the absence of an express provision for any exemption specified in subparagraph (I) of this paragraph (d), all sales tax ordinances and resolutions shall be construed as imposing or continuing to impose the town, city, or county sales tax on such items.

(e) A provision that all sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from said county, town, or city sales tax when such sales meet both of the following conditions:

(I) The purchaser is a nonresident of or has his principal place of business outside of the local taxing entity; and

(II) Such personal property is registered or required to be registered outside the limits of the local taxing entity under the laws of this state.

(f) Repealed.

(1.5) (a) All sales tax ordinances or resolutions adopted by a county, town, or city prior to, on, or after August 1, 2002, that impose a sales tax pursuant to section 39-26-104 (1)(c), C.R.S., on a mobile telecommunications service shall impose such tax in accordance with the provisions of the act, and, pursuant to section 117 (b) of the act, mobile telecommunications service taxable by the county, town, or city on or after August 1, 2002, may be subject to any sales tax or other charge imposed by said entity on the service only if the customer's place of primary use is within the geographical boundaries of the entity.

(b) As used in this subsection (1.5), unless the context otherwise requires:

(I) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(II) "Customer" means customer as defined in section 124 (2) of the act.

(III) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(IV) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(2) No sales tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of construction and building materials, as the term is used in section 29-2-109, if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid.

(3) No sales tax of any statutory or home rule county shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed by the subsequent statutory or home rule

county. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule county with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule county.

(4) No sales tax of any statutory or home rule city and county, city, or town shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by the subsequent statutory or home rule city and county, city, or town. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule city and county, city, or town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule city and county, city, or town.

(5) The following provision shall apply in defining the applicability of its higher rate to the sales tax ordinance or resolution of any statutory or home rule city, town, city and county, or county which provides a higher rate of taxation on prepared food or food for immediate consumption than its general rate of taxation: Prepared food or food for immediate consumption shall exclude any food for domestic home consumption.

(6) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with food stamps. For the purposes of this subsection (6), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(7) No sales or use tax of any statutory or home rule city, town, city and county, or county shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C. sec. 1786. For the purposes of this subsection (7), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(8) Any statutory or home rule city, town, city and county, or county which provides an exemption for the sale of food shall define "food" as defined in section 39-26-102 (4.5), C.R.S.

(9) Notwithstanding any provision of this section to the contrary, sales of cigarettes shall be exempt from a town, city, county, or city and county sales tax that is created pursuant to the authority set forth in this article.

(10) (a) Notwithstanding any provision of this section to the contrary, and except as provided in paragraph (b) of this subsection (10), a town, city, or county may exempt from its sales tax sales to a telecommunications provider of equipment used directly in the provision of telephone service, cable television service, broadband communications service, or mobile telecommunications service.

(b) A town, city, or county may not adopt a sales tax exemption pursuant to the authority set forth in paragraph (a) of this subsection (10) unless the exemption applies in a uniform and nondiscriminatory manner to the telecommunications providers of telephone service, cable television service, broadband communications service, and mobile telecommunications service.

## ADDENDUM C

**39-26-204.5. Remittance of tax - electronic database - retailer held harmless.** The provisions of section 39-26-105.3 allowing vendors to be held harmless for collecting the incorrect amount of tax due on a purchase when relying on a certified database to determine the jurisdictions to which tax is owed shall apply to any retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state that collects and remits use tax to the department of revenue as provided by law.

## **ADDENDUM D**

**39-26-110. Retailer - multiple locations.** A retailer doing business in two or more places or locations, taxable under this part 1, may file each return covering all such business activities engaged within this state.



## ADDENDUM E

### **39-26-707. Food, meals, beverages, and packaging - definitions.**

(1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales of food purchased with food stamps. For the purposes of this paragraph (a), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(b) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786. For the purposes of this paragraph (b), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(c) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on or after March 1, 2010, any such article that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(d) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(e) Commencing January 1, 1980, all sales of food; and

(f) (I) (A) On and after July 1, 2016, all sales of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, all sales to a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I);

(C) On and after July 1, 2016, all sales of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, all sales to a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I).

(II) For purposes of this paragraph (f), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches.

(1.5) (a) Notwithstanding the provisions of paragraph (e) of subsection (1) of this section, on and after May 1, 2010, sales of candy and soft drinks shall be subject to state sales taxation.

(b) For the purposes of this subsection (1.5):

(I) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(II) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) Effective January 1, 1980, the storage, use, or consumption of food or meals that are provided to employees of the places described in section 39-26-104 (1)(e), if such are provided to such employees at no charge or at a reduced charge;

(b) The storage, use, or consumption of any article by a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if the article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such article stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(c) The storage, use, or consumption of any container or bag by a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if the container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(d) (I) Effective January 1, 1980, the storage, use, or consumption of food as defined in section 39-26-102 (4.5); except that, on and after May 1, 2010, the storage, use, or consumption of candy and soft drinks shall be subject to state use taxation.

(II) For the purposes of this paragraph (d):

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(B) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(e) (I) (A) On and after July 1, 2016, the storage, use, or consumption of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, the storage, use, or consumption by a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section;

(C) On and after July 1, 2016, the storage, use, or consumption of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, the storage, use, or consumption by a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section.

(II) For purposes of this paragraph (e), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches.

(2.5) For purposes of this section, "retirement community" means:

(a) An assisted living residence as defined in section 25-27-102 (1.3), C.R.S.;

(b) An independent living facility designed and operated specifically to serve as the primary residence for persons aged fifty-five or older that provides meals and other services to residents as part of a comprehensive fee, including a facility that qualifies as housing for older persons as defined in section 24-34-502 (7)(b) and a life care institution subject to article 49 of title 11; or

(c) A nursing care facility licensed under the authority of section 25-1.5-103 (1)(a)(I)(A), C.R.S., that provides services to persons who, due to physical condition, mental condition, or disability, require continuous or regular inpatient nursing care.

(3) The department of revenue may promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks at retail may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in paragraph (b) of subsection (1.5) of this section, by House Bill 10-1191, enacted in 2010.

(4) For any return made prior to June 1, 2010, a person who sells or stores, uses, or consumes items described in paragraphs (c) and (d) of subsection (1) and paragraphs (b) and (c) of subsection (2) of this section that are nonessential to the end consumer or user shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption for such nonessential items from state sales and use tax by House Bill 10-1194, enacted in 2010.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.17.21

DRAFT

LLS NO. 21-0727.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Sales Tax Statute Modifications To Address Defects"

**A BILL FOR AN ACT**

101 **CONCERNING MODIFICATIONS TO THE SALES AND USE TAX STATUTES IN**  
102 **ORDER TO ADDRESS CERTAIN DEFECTS AND ANACHRONISMS.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee. Section 1** of the bill changes the cross references to certain definitions related to bingo that were relocated as a result of Senate Bill 17-232. The statutory references were not correctly changed for purposes of the bingo equipment sales and use tax exemption. This section addresses that defect.

**Section 2** removes the words "low-emitting" from the description

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

of a sales tax exemption because the exemption is no longer conditioned on the motor vehicle being "low-emitting".

**Section 3** corrects a missed conforming amendment. House Bill 20-1023 provided for the conditional repeal of section 39-26-105.3, C.R.S., to be effectively replaced with section 39-26-105.2, C.R.S. Section 39-26-204.5, C.R.S., a use tax statute, makes reference to section 39-26-105.2, C.R.S., but a conforming amendment to that section was not included in House Bill 20-1023. Section 3 adds the same conditional repeal to the use tax statute and provides the same hold harmless for retailers as is provided in section 39-26-105.2, C.R.S.

**Section 4** addresses an anachronism in the sales tax statutes by repealing section 39-26-110, C.R.S. That statute specifies that a retailer doing business in 2 or more locations in Colorado may file one return that will cover all business locations. This statute was added as part of the "Emergency Retail Sales Tax Act of 1935" and has not been amended since, only moved around. With the advent of home rule taxing jurisdictions that can collect and administer their own sales and use tax, it is no longer possible that retailers doing business in more than one location in Colorado can file only one return to report all sales and use taxes collected because the department of revenue no longer administers all sales and use taxes in the state.

**Section 5** addresses a defect in the sales tax statute by updating the statutory reference for the definition of "food" for purposes of a sales tax exemption for certain types of food. The definition of food is no longer located in 7 U.S.C. sec. 2012 (g). It is better to include a more general cross reference to all of 7 U.S.C. sec. 2012 instead of the specific subsection (g), which is now incorrect. A more general reference allows for later amendments to that section.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 39-26-720 as  
3 follows:

4 **39-26-720. Bingo equipment.** (1) All sales of equipment, as  
5 defined in ~~section 12-9-102 (5), C.R.S.~~ SECTION 24-21-602 (16), to a  
6 bingo-raffle licensee, as defined in ~~section 12-9-102 (1.2), C.R.S., shall~~  
7 ~~be~~ SECTION 24-21-602 (3), ARE exempt from taxation under part 1 of this  
8 ~~article~~ ARTICLE 26.

9 (2) The storage, use, or consumption of equipment, as defined in

1 ~~section 12-9-102 (5), C.R.S.~~ SECTION 24-21-602 (16), by a bingo-affle  
2 licensee, as defined in ~~section 12-9-102 (1.2), C.R.S., shall be~~ SECTION  
3 24-21-602 (3), IS exempt from taxation under part 2 of this ~~article~~  
4 ARTICLE 26.

5 **SECTION 2.** In Colorado Revised Statutes, 29-2-105, **amend**  
6 (1)(d)(I)(G) as follows:

7 **29-2-105. Contents of sales tax ordinances and proposals.**

8 (1) The sales tax ordinance or proposal of any incorporated town, city,  
9 or county adopted pursuant to this article 2 shall be imposed on the sale  
10 of tangible personal property at retail or the furnishing of services, as  
11 provided in subsection (1)(d) of this section. Any countywide or  
12 incorporated town or city sales tax ordinance or proposal shall include the  
13 following provisions:

14 (d) (I) A provision that the sale of tangible personal property and  
15 services taxable pursuant to this article 2 shall be the same as the sale of  
16 tangible personal property and services taxable pursuant to section  
17 39-26-104, except as otherwise provided in this subsection (1)(d). The  
18 sale of tangible personal property and services taxable pursuant to this  
19 article 2 shall be subject to the same sales tax exemptions as those  
20 specified in part 7 of article 26 of title 39; except that the sale of the  
21 following may be exempted from a town, city, or county sales tax only by  
22 the express inclusion of the exemption either at the time of adoption of  
23 the initial sales tax ordinance or resolution or by amendment thereto:

24 (G) The exemption for sales of ~~low-emitting~~ motor vehicles,  
25 power sources, or parts used for converting such power sources as  
26 specified in section 39-26-719 (1); ~~C.R.S.~~

27 **SECTION 3.** In Colorado Revised Statutes, **amend** 39-26-204.5

1 as follows:

2 **39-26-204.5. Remittance of tax - electronic database - retailer**

3 **held harmless - repeal.** (1) (a) The provisions of section 39-26-105.3

4 allowing vendors to be held harmless for collecting the incorrect amount

5 of tax due on a purchase when relying on a certified database to

6 determine the jurisdictions to which tax is owed shall apply to any retailer

7 doing business in this state and making sales of tangible personal property

8 for storage, use, or consumption in the state that collects and remits use

9 tax to the department of revenue as provided by law.

10 (b) THIS SUBSECTION (1) IS REPEALED, EFFECTIVE NINETY DAYS

11 AFTER THE DATE THAT THE REVISOR OF STATUTES IS NOTIFIED BY THE

12 DEPARTMENT OF REVENUE THAT A GEOGRAPHIC INFORMATION SYSTEM

13 THAT MEETS THE DEFINED SCOPE OF WORK SET FORTH IN THE REQUEST FOR

14 SOLICITATION, PROVIDED BY THE STATE, IS ONLINE, TESTED, AND VERIFIED

15 BY THE DEPARTMENT OF REVENUE TO BE OPERATIONAL, SUPPORTED, AND

16 AVAILABLE FOR A RETAILER TO USE TO DETERMINE THE TAXING

17 JURISDICTION IN WHICH AN ADDRESS RESIDES. THE DEPARTMENT OF

18 REVENUE SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING, BY EMAIL

19 TO REVISOROFSTATUTES.GA@STATE.CO.US, NO LATER THAN FIFTEEN DAYS

20 AFTER SUCH A SYSTEM IS ONLINE, TESTED, AND VERIFIED BY THE

21 DEPARTMENT OF REVENUE TO BE OPERATIONAL, SUPPORTED, AND

22 AVAILABLE FOR USE.

23 (2) THE PROVISIONS OF SECTION 39-26-105.2 ALLOWING VENDORS

24 TO BE HELD HARMLESS FOR COLLECTING THE INCORRECT AMOUNT OF TAX

25 DUE ON A PURCHASE WHEN USING THE DATA CONTAINED IN THE GIS

26 DATABASE, OR USING DATA FROM A THIRD-PARTY DATABASE THAT IS

27 VERIFIED TO USE THE MOST RECENT INFORMATION PROVIDED BY THE GIS



1 DATABASE, TO DETERMINE THE JURISDICTIONS TO WHICH TAX IS OWED  
2 APPLIES TO ANY RETAILER DOING BUSINESS IN THIS STATE AND MAKING  
3 SALES OF TANGIBLE PERSONAL PROPERTY FOR STORAGE, USE, OR  
4 CONSUMPTION IN THE STATE THAT COLLECTS AND REMITS USE TAX TO THE  
5 DEPARTMENT OF REVENUE AS PROVIDED BY LAW.

6 **SECTION 4.** In Colorado Revised Statutes, **repeal** 39-26-110 as  
7 follows:

8 **39-26-110. Retailer - multiple locations.** ~~A retailer doing~~  
9 ~~business in two or more places or locations, taxable under this part 1, may~~  
10 ~~file each return covering all such business activities engaged within this~~  
11 ~~state.~~

12 **SECTION 5.** In Colorado Revised Statutes, 39-26-707, **amend**  
13 (1) introductory portion and (1)(a) as follows:

14 **39-26-707. Food, meals, beverages, and packaging -**  
15 **definitions.** (1) The following shall be exempt from taxation under the  
16 provisions of part 1 of this ~~article~~ ARTICLE 26:

17 (a) All sales of food purchased with food stamps. For the purposes  
18 of this ~~paragraph (a)~~ SUBSECTION (1)(a), "food" ~~shall have~~ HAS the same  
19 meaning as provided in ~~7 U.S.C. sec. 2012 (g)~~ IN 7 U.S.C. SEC. 2012, as  
20 such section exists on October 1, 1987, or is thereafter amended.

21 **SECTION 6. Act subject to petition - effective date.** This act  
22 takes effect at 12:01 a.m. on the day following the expiration of the  
23 ninety-day period after final adjournment of the general assembly; except  
24 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
25 of the state constitution against this act or an item, section, or part of this  
26 act within such period, then the act, item, section, or part will not take  
27 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.

# **OFFICE OF LEGISLATIVE LEGAL SERVICES**

**COLORADO GENERAL ASSEMBLY**

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## **MEMORANDUM<sup>1</sup>**

**TO:** Statutory Revision Committee

**FROM:** Esther van Mourik, Office of Legislative Legal Services

**DATE:** February 19, 2021

**SUBJECT:** Inclusion of use tax exemptions for certain existing sales tax exemptions.

### **Summary**

Several statutory sections in part 7 of article 26 of title 39, C.R.S., provide sales tax exemptions for certain items but do not provide corresponding use tax exemptions for those items. As a result, the items could become subject to a use tax when a tax-exempt sale occurs. Most statutory sales tax exemptions have corresponding use tax exemptions to prevent this. The Department of Revenue identified these particular sales tax exemptions without corresponding use tax exemptions.

### **Analysis**

The sales tax exemptions for the following items do not include corresponding use tax exemptions:

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

- Food purchased with the Supplemental Nutrition Assistance Program (SNAP) or the supplemental food program for women, infants, and children (WIC) in section 39-26-707 (1)(a) and (1)(b), C.R.S.;
- Certain aircraft in section 39-26-711.5 (1), C.R.S.;
- Certain drugs, medical equipment, and other items in section 39-26-717 (2), C.R.S.;
- Certain sales made by either charitable organizations, parent teacher organizations, and parent teacher associations in section 39-26-718 (1)(b) and (1)(c), C.R.S.;
- Certain sales that benefit Colorado schools in section 39-26-725, C.R.S.; and
- Retail marijuana in section 39-26-729, C.R.S.<sup>2</sup>

The imposition of a use tax on an item that is exempted from sales tax is generally incompatible with the fundamental principles of the use tax and two Colorado Supreme Court decisions.<sup>3</sup>

In *Matthews v. Dept. of Rev.*,<sup>4</sup> the Colorado Supreme Court contemplated whether it is constitutionally permissible for the state to deny a trade-in allowance in computing the use tax on a motor vehicle purchased out of state when such a credit is allowed when the vehicle is purchased in Colorado. The Court held:

In both Connecticut and West Virginia, the state legislatures provided a trade-in exemption in sales tax schemes identical to Colorado's. Like Colorado, both states failed to provide a trade-in exemption in the use tax. The Connecticut and West Virginia courts held that the schemes constituted violations of the Commerce Clause.... We agree with the Connecticut and West Virginia courts.<sup>5</sup>

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<sup>2</sup> Attached as Addenda A through F.

<sup>3</sup> There are exceptions to this principle, such as when the sales tax exemption is designed to effectuate taxation in another jurisdiction, for example, with local taxation of motor vehicles in Colorado.

<sup>4</sup> *Matthews v. Dept. of Rev.*, 562 P.2d 415 (1977)

<sup>5</sup> *Id.* at 419 (internal citations omitted).

In *Int'l Bus. Machs. Corp. v. Charnes*,<sup>6</sup> the Colorado Supreme Court determined that a use tax on the "full finished use cost" of an item, instead of the materials cost as would be assessed under sales tax, contravened the "supplementary nature and equalizing function of the use tax."<sup>7</sup> Indeed, the Court stated that "the burden on the taxpayer should be no greater than necessary to compensate for the sales tax originally avoided on the purchases."<sup>8</sup> These holdings indicate that where a sales tax exemption is allowed to a taxpayer, a corresponding use tax exemption should also be allowed.

The suggested statutory revisions for each section in the proposed bill would add the missing use tax exemption in order to clarify that an item that is subject to a sales tax exemption is exempt from both sales and use tax. The changes make those statutory sections compatible with the fundamental principles of the use tax and Colorado Supreme Court decisions on the subject.

## **Statutory Charge<sup>9</sup>**

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The addition of use tax exemptions to these specific sales tax exemptions fits within the SRC's charge because the revisions would address these contradictory and defective sections in the law.

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<sup>6</sup> *Int'l Bus. Machs. Corp. v. Charnes*, 601 P.2d 622 (1979)

<sup>7</sup> *Id.* at 624.

<sup>8</sup> *Id.*

<sup>9</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

## **Proposed Bill**

The attached proposed bill adds use tax exemptions where missing from the sales tax exemptions.

## ADDENDUM A

**39-26-707. Food, meals, beverages, and packaging - definitions.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales of food purchased with food stamps. For the purposes of this paragraph (a), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(b) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786. For the purposes of this paragraph (b), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(c) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on or after March 1, 2010, any such article that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(d) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(e) Commencing January 1, 1980, all sales of food; and

(f) (I) (A) On and after July 1, 2016, all sales of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, all sales to a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I);

(C) On and after July 1, 2016, all sales of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, all sales to a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of this subparagraph (I).

(II) For purposes of this paragraph (f), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches.

(1.5) (a) Notwithstanding the provisions of paragraph (e) of subsection (1) of this section, on and after May 1, 2010, sales of candy and soft drinks shall be subject to state sales taxation.

(b) For the purposes of this subsection (1.5):

(I) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(II) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) Effective January 1, 1980, the storage, use, or consumption of food or meals that are provided to employees of the places described in section 39-26-104 (1)(e), if such are provided to such employees at no charge or at a reduced charge;

(b) The storage, use, or consumption of any article by a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if the article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such article stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;



(c) The storage, use, or consumption of any container or bag by a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if the container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1)(a) or (1)(e); except that, on and after March 1, 2010, any such container or bag stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(d) (I) Effective January 1, 1980, the storage, use, or consumption of food as defined in section 39-26-102 (4.5); except that, on and after May 1, 2010, the storage, use, or consumption of candy and soft drinks shall be subject to state use taxation.

(II) For the purposes of this paragraph (d):

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(B) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(e) (I) (A) On and after July 1, 2016, the storage, use, or consumption of food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community;

(B) On and after July 1, 2016, the storage, use, or consumption by a retirement community of food, food products, snacks, beverages, and meals for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section;

(C) On and after July 1, 2016, the storage, use, or consumption of any container, bag, or article used by or furnished to a consumer for the purpose of packaging, bagging, or use with food, food products, snacks, beverages, and meals provided for consumption by residents on the premises of a retirement community; and

(D) On and after July 1, 2016, the storage, use, or consumption by a retirement community of any container, bag, or article used by or furnished to a consumer for purposes of a sale described in sub-subparagraph (A) of subparagraph (I) of paragraph (f) of subsection (1) of this section.

(II) For purposes of this paragraph (e), "food" includes prepared salads, salad bars, and packaged and unpackaged cold sandwiches

(2.5) For purposes of this section, "retirement community" means:

(a) An assisted living residence as defined in section 25-27-102 (1.3), C.R.S.;

(b) An independent living facility designed and operated specifically to serve as the primary residence for persons aged fifty-five or older that provides meals and other services to residents as part of a comprehensive fee, including a facility that qualifies as housing for older persons as defined in section 24-34-502 (7)(b) and a life care institution subject to article 49 of title 11; or

(c) A nursing care facility licensed under the authority of section 25-1.5-103 (1)(a)(I)(A), C.R.S., that provides services to persons who, due to physical condition, mental condition, or disability, require continuous or regular inpatient nursing care.

(3) The department of revenue may promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks at retail may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in paragraph (b) of subsection (1.5) of this section, by House Bill 10-1191, enacted in 2010.

(4) For any return made prior to June 1, 2010, a person who sells or stores, uses, or consumes items described in paragraphs (c) and (d) of subsection (1) and paragraphs (b) and (c) of subsection (2) of this section that are nonessential to the end consumer or user shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption for such nonessential items from state sales and use tax by House Bill 10-1194, enacted in 2010.

## ADDENDUM B

**39-26-711.5. Aircraft - use outside state.** (1) The sale of a new or used aircraft shall be exempt from taxation under the provisions of part 1 of this article if:

(a) The aircraft is sold to a person who is not a resident of the state;  
(b) The aircraft will be removed from the state within the longer of the following periods:

(I) One hundred twenty days after the date of the sale; or  
(II) Thirty days after the completion of maintenance, interior refurbishment, paint, or engine work associated with the sale of the aircraft; and  
(c) The aircraft will not be in the state more than seventy-three days in any of the three calendar years following the calendar year in which the aircraft is removed from the state pursuant to paragraph (b) of this subsection (1).

(2) A purchaser of an aircraft who claims the exemption allowed by this section shall, at the time of purchase, provide to the seller an affidavit that the purchaser is not a resident of the state and that the purchaser agrees to pay the tax imposed by part 1 of this article if the purchaser fails to comply with the requirements of paragraphs (b) and (c) of subsection (1) of this section.

(3) An aircraft that is hangared or parked overnight shall be considered to be in the state for purposes of this section.

## ADDENDUM C

### **39-26-717. Drugs and medical and therapeutic devices - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) (I) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription order, that:

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Is generally not useful to a person in the absence of illness or injury; and
- (D) Is not worn in or on the body.

(II) "Durable medical equipment" includes hospital beds, intravenous poles and pumps, trapeze bars, toileting aids, bath and shower aids, standing aids, adaptive car seats, communication devices, and any related accessories for such items.

(b) (I) "Mobility enhancing equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription order, that:

- (A) Is primarily and customarily used to provide or increase the ability to move from one place to another;
- (B) Is appropriate for use in a home, in a person's community, or in a motor vehicle;
- (C) Is not generally used by persons with normal mobility; and
- (D) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(II) "Mobility enhancing equipment" includes wheelchairs and wheelchair components or accessories, walking aids such as crutches, canes, or walkers, grab bars, trapeze bars, lift chairs, patient lifts, motorized carts, scooters, controls that are installed on motor vehicles, and any related accessories for such items.

(c) "Practitioner" has the same meaning as set forth in section 12-280-103 (40).

(d) "Prescription" has the same meaning as set forth in section 12-280-103 (41).

(e) For purposes of subsections (1)(a)(I), (1)(b)(I), (2)(g), (2)(h), and (2)(i) of this section, "prescription order" means any order for a prescription that:

- (I) (A) Is in writing, dated, and signed by a practitioner; or
- (B) Is given orally by a practitioner and immediately reduced to writing by the pharmacist or pharmacy intern, or by a representative of a business licensed to sell items described in subsection (2)(g), (2)(h), (2)(i), or (2)(j) of this section

so long as such prescription order is also followed by an electronic submission of the prescription order to the business; and

(II) Specifying the name and address of the person for whom an item described in subsection (2)(g), (2)(h), (2)(i), or (2)(j) of this section is prescribed and directions, if any, to be included with such item.

(2) The following are exempt from taxation under part 1 of this article 26:

(a) All sales of prescription drugs dispensed in accordance with a prescription by a practitioner or furnished by a practitioner as part of professional services provided to a patient or client;

(b) All sales of insulin in all its forms dispensed pursuant to the direction of a practitioner;

(c) All sales of glucose useable for treatment of insulin reactions;

(d) All sales of urine- and blood-testing kits and materials;

(e) All sales of insulin measuring and injecting devices, including hypodermic syringes and needles;

(f) All sales of prosthetic devices;

(g) All sales of oxygen delivery equipment and disposable medical supplies related to oxygen delivery dispensed pursuant to a prescription order;

(h) All sales of medical, feeding, and disposable supplies, including any related accessories, for incontinence, infusion, enteral nutrition, ostomy, urology, diabetic care, and wound care dispensed pursuant to a prescription order;

(i) All sales of equipment and related accessories for sleep therapy, inhalation therapy, and electrotherapy dispensed pursuant to a prescription order;

(j) All sales of durable medical equipment and mobility enhancing equipment;

(k) All sales of nonprescription drugs or materials when furnished by a practitioner as part of professional services provided to a patient; and

(l) All sales of corrective eyeglasses, contact lenses, or hearing aids.

## ADDENDUM D

**39-26-718. Charitable organizations - association or organization of parents and teachers of public school students.** (1) The following shall be exempt from taxation under the provisions of part 1 of this article 26:

(a) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities;

(b) (I) All sales by a charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this article 26 if:

(A) The net proceeds from sales by the charitable organizations of tangible personal property, commodities, or services otherwise subject to tax under this article 26 do not exceed forty-five thousand dollars during the preceding calendar year; and

(B) The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service.

(II) The exemption in this subsection (1)(b) shall not apply to sales made by a charitable organization on and after the date that the net proceeds from sales by the charitable organization of tangible personal property, commodities, or services otherwise subject to tax under this article 26 exceeds forty-five thousand dollars during the current calendar year.

(c) On or after September 1, 2008, a sale by an association or organization of parents and teachers of public school students that is a charitable organization, if the association or organization uses the funds raised through the sale for the benefit of a public school or an organized public school activity or to pay the reasonable expenses of the association or organization.

## ADDENDUM E

**39-26-725. Sales related to a school - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Parent" means a parent of a student as defined in paragraph (d) of this subsection (1).

(b) "Sale that benefits a Colorado school" means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to the person or entity described in subsection (2) of this section, are donated to a school or a school-approved student organization.

(c) "School" means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof.

(d) "Student" means any person enrolled in a school as defined in paragraph (c) of this subsection (1).

(2) On or after September 1, 2008, a sale that benefits a Colorado school shall be exempt from taxation under the provisions of part 1 of this article, if the sale is made by any of the following:

(a) A school;

(b) An association or organization of parents and school teachers;

(c) A booster club or other club, group, or organization whose primary purpose is to support a school activity; or

(d) A school class or student club, group, or organization.

(3) Nothing in this section shall be construed as creating an exemption, or otherwise affecting an existing exemption, for a sale to a person or entity described in subsection (2) of this section.

## ADDENDUM F

**39-26-729. Retail sales of marijuana.** (1) (a) Except as otherwise provided in subsection (1)(b) of this section, on and after July 1, 2017, all retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 are exempt from taxation under part 1 of this article 26 by the state or by any special district or other limited purpose governmental entity that was not levying sales tax on retail sales of marijuana under part 1 of this article 26 before July 1, 2017. Notwithstanding any other law to the contrary, any special district or other limited purpose governmental entity that was levying sales tax on retail sales of marijuana under part 1 of this article 26 before July 1, 2017, retains its authority to continue levying sales tax upon retail sales of marijuana under this article 26.

(b) Any metropolitan district that levies a general uniform sales tax as authorized by section 32-1-1106 (1), health assurance district that levies a general uniform sales tax as authorized by section 32-19-112 (1), or health service district that levies a general uniform sales tax as authorized by section 32-19-112 (1) may levy its general uniform sales tax on retail sales of marijuana upon which the retail marijuana sales tax is imposed pursuant to section 39-28.8-202 regardless of whether or not the district was levying any sales tax on such sales before July 1, 2017.

(2) The governing body of any special district or limited purpose governmental entity that was levying sales tax upon retail marijuana sales before July 1, 2017, and the governing body of any metropolitan district, health assurance district, or health service district that is authorized by subsection (1)(b) of this section to levy a general uniform sales tax on retail marijuana sales shall determine whether the levying of such sales tax complies with the Colorado constitution and applicable decisions of the Colorado supreme court and Colorado court of appeals and, if the governing body of any such special district or limited purpose governmental entity determines that additional voter approval is required to levy sales tax upon retail sales of marijuana, the special district or limited purpose governmental entity shall not resume levying sales tax upon such sales until voter approval is obtained.



First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.8.21

DRAFT

LLS NO. 21-0718.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Add Use Tax Exemption To Some Sales Tax Exemption"

**A BILL FOR AN ACT**

101      **CONCERNING THE INCLUSION OF USE TAX EXEMPTIONS FOR CERTAIN**  
102                **EXISTING SALES TAX EXEMPTIONS IN ORDER TO MAKE THE**  
103                **EXEMPTIONS COMPATIBLE WITH FUNDAMENTAL PRINCIPLES OF**  
104                **SALES AND USE TAX.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** All of the current law sections presented in the bill provide sales tax exemptions for specific items. None of the sales tax exemptions in the bill authorize corresponding use tax

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

exemptions. As a result, an item could conceivably become subject to use tax the instant the tax-exempt sale occurs. Most statutory sales tax exemptions have corresponding use tax exemptions to prevent this. Consequently, the bill addresses defects in statute by clarifying that an item that is subject to a sales tax exemption is actually exempt from both sales and use tax and makes those statutory sections compatible with the fundamental principles of use tax and Colorado supreme court decisions on the subject.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 39-26-707, **amend** (2) introductory portion; and **add** (2)(f) and (2)(g) as follows:

**39-26-707. Food, meals, beverages, and packaging - definitions.** (2) The following shall be exempt from taxation under the provisions of part 2 of this ~~article~~ ARTICLE 26:

(f) THE STORAGE, USE, OR CONSUMPTION OF ALL FOOD PURCHASED WITH FOOD STAMPS. FOR PURPOSES OF THIS SUBSECTION (2)(f), "FOOD" HAS THE SAME MEANING AS PROVIDED IN 7 U.S.C. SEC. 2012, AS SUCH SECTION EXISTS ON OCTOBER 1, 1987, OR IS THEREAFTER AMENDED.

(g) THE STORAGE, USE, OR CONSUMPTION OF ALL FOOD PURCHASED WITH FUNDS PROVIDED BY THE SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN, AS PROVIDED FOR IN 42 U.S.C. SEC. 1786. FOR THE PURPOSES OF THIS SUBSECTION (2)(g), "FOOD" HAS THE SAME MEANING AS PROVIDED IN 42 U.S.C. SEC. 1786, AS SUCH SECTION EXISTS ON OCTOBER 1, 1987, OR IS THEREAFTER AMENDED.

**SECTION 2.** In Colorado Revised Statutes, 39-26-711.5, **amend** (1) introductory portion as follows:

**39-26-711.5. Aircraft - use outside state.** (1) The sale, STORAGE, USE, AND CONSUMPTION of a new or used aircraft shall be exempt from taxation under the provisions of part 1 AND PART 2 of this ~~article~~ ARTICLE

1 26 if:

2 **SECTION 3.** In Colorado Revised Statutes, 39-26-717, **add** (3)  
3 as follows:

4 **39-26-717. Drugs and medical and therapeutic devices -**  
5 **definitions.** (3) THE STORAGE, USE, OR CONSUMPTION OF ANY ITEM THAT  
6 IS EXEMPT FROM SALES TAX BY OPERATION OF SUBSECTION (2) OF THIS  
7 SECTION IS EXEMPT FROM TAXATION UNDER THE PROVISIONS OF PART 2 OF  
8 THIS ARTICLE 26.

9 **SECTION 4.** In Colorado Revised Statutes, 39-26-718, **add** (2)  
10 as follows:

11 **39-26-718. Charitable organizations - association or**  
12 **organization of parents and teachers of public school students.**  
13 (2) THE STORAGE, USE, OR CONSUMPTION OF ANY ITEM THAT IS EXEMPT  
14 FROM SALES TAX BY OPERATION OF SUBSECTION (1)(b) OR (1)(c) OF THIS  
15 SECTION IS EXEMPT FROM TAXATION UNDER THE PROVISIONS OF PART 2 OF  
16 THIS ARTICLE 26.

17 **SECTION 5.** In Colorado Revised Statutes, 39-26-725, **add** (4)  
18 as follows:

19 **39-26-725. Sales related to a school - definitions.** (4) THE  
20 STORAGE, USE, OR CONSUMPTION OF ANY ITEM THAT IS EXEMPT FROM  
21 SALES TAX BY OPERATION OF SUBSECTION (2) OF THIS SECTION IS EXEMPT  
22 FROM TAXATION UNDER THE PROVISIONS OF PART 2 OF THIS ARTICLE 26.

23 **SECTION 6.** In Colorado Revised Statutes, 39-26-729, **add** (3)  
24 as follows:

25 **39-26-729. Retail sales of marijuana.** (3) THE STORAGE, USE, OR  
26 CONSUMPTION OF ANY RETAIL MARIJUANA THAT IS EXEMPT FROM SALES  
27 TAX BY OPERATION OF SUBSECTION (1) OF THIS SECTION IS EXEMPT FROM

1 TAXATION UNDER THE PROVISIONS OF PART 2 OF THIS ARTICLE 26.

2           **SECTION 7. Act subject to petition - effective date.** This act  
3 takes effect at 12:01 a.m. on the day following the expiration of the  
4 ninety-day period after final adjournment of the general assembly; except  
5 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
6 of the state constitution against this act or an item, section, or part of this  
7 act within such period, then the act, item, section, or part will not take  
8 effect unless approved by the people at the general election to be held in  
9 November 2022 and, in such case, will take effect on the date of the  
10 official declaration of the vote thereon by the governor.

# **OFFICE OF LEGISLATIVE LEGAL SERVICES**

**COLORADO GENERAL ASSEMBLY**

**COLORADO STATE CAPITOL  
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## **MEMORANDUM<sup>1</sup>**

**TO:** Statutory Revision Committee

**FROM:** Esther van Mourik, Office of Legislative Legal Services

**DATE:** February 19, 2021

**SUBJECT:** Obsolete Capitol Dome Restoration Fund Statutes

### **Summary**

Section 44-30-1201 (5)(c)(III), C.R.S., creates the capitol dome restoration fund. That section is obsolete. The capitol dome restoration was a capital project that commenced in 2010 and has since been completed. Therefore, section 44-30-1201 (5)(c)(III), C.R.S., should be repealed. The Office of Legislative Legal Services identified this provision.

### **Analysis**

The capitol dome restoration was a capital project that commenced in 2010 and has since been completed. The statutory sections regarding the capitol dome restoration were repealed in July 2015 but the statute establishing the fund and the necessary transfers of money to the fund were inadvertently left in the statutes. The proposed bill addresses this defect.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

## **Statutory Charge<sup>2</sup>**

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The repeal of section 44-30-1201 (5)(c)(III), C.R.S., fits within the SRC's charge because it would eliminate antiquated rules of law.

## **Proposed Bill**

The attached bill repeals section 44-30-1201 (5)(c)(III), C.R.S., and removes any reference to that section within section 44-30-1201, C.R.S.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

## ADDENDUM A

### **44-30-1201. State historical fund - administration - legislative declaration - state museum cash fund - capitol dome restoration fund - rules - definition.**

(1) The state treasurer shall make annual distributions, from the state historical fund created by section 9 (5)(b)(II) of article XVIII of the state constitution, in accordance with the provisions of section 9 (5)(b)(III) of article XVIII of the state constitution. As specified in section 9 (5)(b)(III) of article XVIII of the state constitution, twenty percent of the money in the state historical fund shall be used for the preservation and restoration of the cities of Central, Black Hawk, and Cripple Creek. The remaining eighty percent of the fund shall be administered by the state historical society in accordance with subsection (5) of this section. Expenditures from the fund shall be subject to the provisions of section 44-30-1202. The society shall make grants from the eighty percent portion of said fund administered by the society for the following historic preservation purposes:

(a) The identification, evaluation, documentation, study, and marking of buildings, structures, objects, sites, or areas important in the history, architecture, archaeology, or culture of this state, and the official designation of the properties;

(b) The excavation, stabilization, preservation, restoration, rehabilitation, reconstruction, or acquisition of the designated properties;

(c) Education and training for governmental entities, organizations, and private citizens on how to plan for and accommodate the preservation of historic and archaeological structures, buildings, objects, sites, and districts;

(d) Preparation, production, distribution, and presentation of educational, informational, and technical documents, guidance, and aids on historic preservation practices, standards, guidelines, techniques, economic incentives, protective mechanisms, and historic preservation planning.

(2) (a) The society shall make grants primarily to governmental entities and to nonprofit organizations; except that the society may make grants to persons in the private sector so long as the person requesting the grant makes application through a governmental entity. The selection of recipients and the amount granted to a recipient shall be determined by the society, which determination shall be based on the information provided in the applications submitted to the society.

(b) As used in this subsection (2), "governmental entity" means the state and any state agency or institution, county, city and county, incorporated city or town, school district, special improvement district, authority, and every other kind of district, instrumentality, or political subdivision of the state organized pursuant to law. "Governmental entity" shall include any county, city and county, or incorporated city or town, governed by a home rule charter.

(3) Subject to annual appropriation, the society may employ any personnel in accordance with section 13 of article XII of the state constitution that may be necessary to fulfill its duties in accordance with this section.

(4) The society shall promulgate rules for the purpose of administering the state historical fund, which rules may include criteria for consideration in awarding grants from the fund and standards for preservation that are acceptable to the society and that shall be employed by grant recipients.

(5) (a) (I) The general assembly hereby finds and declares that:

(A) The state historical society, founded in 1879, has a unique role as the state educational institution charged with collecting, preserving, and interpreting the history of Colorado and the west. The state formally recognized the state historical society as a state agency by statute in 1915, and the general assembly has continuously made appropriations for the society since that time.

(B) The state historical fund created by section 9 (5)(b)(II) of article XVIII of the state constitution has grown significantly since its inception in 1991. In accordance with section 9 (5)(b)(III) of article XVIII of the state constitution, the general assembly hereby determines that it is appropriate to provide funding for the state historical society through the state historical fund.

(C) The use of a portion of the state historical fund for the support needs of the state historical society is consistent with the preservation purposes of the fund and of the society.

(D) Grants from the state historical fund by the society pursuant to subsection (1) of this section serve the state and its people well in promoting preservation purposes and economic development throughout the state.

(II) Accordingly, it is the intent of the general assembly that the majority of the gaming revenues deposited in and available for distribution from the eighty percent portion of the state historical fund administered by the society shall continue to be used for the grants.

(III) Notwithstanding the findings in subsection (5)(a)(II) of this section, as a result of the severe losses in gaming revenues and earned revenues of the state historical society caused by the COVID-19 pandemic, the general assembly finds it of critical importance to support the needs of the society and, consistent with the preservation purposes of the state historical fund, to allow a limited amount of money normally used for grants to be transferred to the museum and preservation operations account for the fiscal years commencing July 1, 2020, and July 1, 2021, only.

(b) Subject to annual appropriation, the society may make expenditures from the museum and preservation operations account for the reasonable costs incurred by the society in connection with fulfilling the society's mission as a state educational institution to collect, preserve, and interpret the history of Colorado and the west and carrying out other activities and programs authorized by statute or rule. The reasonable costs may include capital construction and controlled



maintenance expenditures relating to properties owned, managed, or used by the society.

(c) (I) All money received by the society from limited gaming revenues pursuant to section 44-30-701 (1)(d)(II) shall be transmitted to the state treasurer, who shall credit the same to the state historical fund. Eighty percent of the state historical fund administered by the society is divided into the following two accounts:

(A) The preservation grant program account, hereby created in the state historical fund, that consists of fifty and one-tenth of one percent of the money received from the society in a fiscal year. Money in the account is subject to annual appropriation by the general assembly to the society to cover the reasonable costs as may be incurred in the selection, monitoring, and administration of grants for historic preservation purposes. Any money not appropriated for the costs is continuously appropriated to the society for the purpose of making grants pursuant to subsection (1) of this section.

(B) The museum and preservation operations account, hereby created in the state historical fund, that consists of forty-nine and nine-tenths of one percent of the money received from the society in a fiscal year. Money in the account is subject to annual appropriation by the general assembly for the purposes set forth in subsection (5)(b) of this section.

(II) Except as otherwise specified in subsection (5)(c)(III) of this section, all interest and income derived from the deposit and investment of money in the state historical fund, including the accounts created in subsections (5)(c)(I)(A) and (5)(c)(I)(B) of this section, shall remain in the fund. At the end of any fiscal year, all unexpended and unencumbered money in the fund remains therein and shall not be transferred or revert to the general fund or any other fund; except that, for the fiscal year commencing July 1, 2008, and for each fiscal year thereafter through the fiscal year commencing July 1, 2045, the society may direct the state treasurer to transfer any unexpended and unencumbered money in the museum and preservation operations account at the end of the fiscal year to the state museum cash fund created pursuant to section 24-80-214. The state treasurer shall be the custodian of the funds pursuant to section 24-80-209.

(III) (A) For the fiscal year commencing July 1, 2010, the state treasurer shall transfer four million dollars from the state historical fund, from the portion reserved for the statewide grant program for preservation pursuant to subsection (5)(d)(II)(A) of this section, at the beginning of the fiscal year to the capitol dome restoration fund, also referred to in this subsection (5)(c)(III) as the "fund", hereby created in the state treasury. Money in the fund is subject to appropriation by the general assembly for repairs and safety improvements to the state capitol dome and supporting structures and for no other purpose, and any unexpended and unencumbered money remaining in the fund as of June 30, 2011, shall not

revert to the state historical fund or any other fund. The four million dollar transfer specified in this subsection (5)(c)(III)(A) shall be reduced, dollar for dollar, by money deposited into the capitol dome restoration trust fund as specified in section 2-3-1304.3 (6)(b), if any. This dollar-for-dollar reduction shall not reduce the authorized fees and expenses of any fund-raising firm selected by the capital development committee for cause-related marketing for capitol dome repairs.

(B) For the fiscal years commencing July 1, 2011, and July 1, 2012, the state treasurer shall transfer up to four million dollars from the state historical fund, from the portion reserved for the statewide grant program for preservation pursuant to subsection (5)(d)(II)(A) of this section, at the beginning of the fiscal year to the capitol dome restoration fund; except that the said four-million-dollar maximum amount shall be reduced, dollar for dollar, by the combined total of money deposited into the capitol dome restoration trust fund as specified in section 2-3-1304.3 (6)(b), if any, and grants for repairs and safety improvements to the state capitol dome and supporting structures made by the state historical society under the grants process set forth in subsection (1) of this section. This dollar-for-dollar reduction shall not reduce any authorized fees and expenses of any fund-raising firm selected by the capital development committee for cause-related marketing for capitol dome repairs.

(C) In the event of an emergency contingency expenditure deemed necessary by the state architect and approved by the office of state planning and budgeting and the capital development committee, supplemental appropriations out of the capitol dome restoration trust fund created in section 2-3-1304.3 (6)(b), and the capitol dome restoration fund created in subsection (5)(c)(III)(A) of this section may be made from any unexpended and unencumbered money remaining in the specified funds at any time.

(D) Prior to the end of the 2014-15 state fiscal year and after a complete accounting is available of the total in-kind and monetary donations received through the fund-raising program established in section 2-3-1304.3, an end-of-project accounting shall occur based on the final total cost of the dome restoration construction project to ensure, through the annual general appropriations act, supplemental appropriations acts, or transfers between funds, as necessary, that all of the transfers from the state historical fund specified in subsections (5)(c)(III)(A) and (5)(c)(III)(B) of this section, and the 2013-14 appropriation from the capital construction fund specified in Senate Bill 13-230, are reduced, dollar for dollar, by the combined total of money deposited into the capitol dome restoration trust fund as specified in section 2-3-1304.3 (6)(b), grants for repairs and safety improvements to the state capitol dome and supporting structures made by the state historical society under the grants process set forth in subsection (1) of this section, any money received for the recycling of salvaged building materials from the state capitol dome during the construction period, and any

in-kind gifts and donations, such as materials or labor, that resulted in the reduction of the total cost of the construction. The total value of any in-kind gifts and donations for purposes of the dollar-for-dollar reduction specified in this subsection (5)(c)(III)(D) shall be calculated by the department of personnel and approved by the capital development committee as specified in section 2-3-1304.3 (6)(a)(II).

(E) Until completion of the capitol dome restoration project as reported by the state architect pursuant to section 2-3-1304.5, the Colorado historical society shall submit an annual report to the capital development committee on or before December 15 of each year concerning all grants awarded from the state historical fund.

(d) (I) The general assembly finds and declares that:

(A) To better preserve, study, and restore historical sites and objects throughout the state, it is in the best interest of the state to construct a new Colorado state museum and offices for the state historical society; and

(B) Construction of a new Colorado state museum and offices for the state historical society will provide improved historic preservation, education, planning, and interpretation of Colorado's heritage, including the identification, evaluation, study, and marking of buildings, structures, objects, sites, or areas important in the history, architecture, archeology, or culture of the state; the official designation of the properties as appropriate for preservation; and other activities described in subsections (1)(c) and (1)(d) of this section.

(II) The general assembly reaffirms its intent that:

(A) The majority of the eighty percent portion of the state historical fund administered by the society shall continue to be used for the statewide grants for historic preservation purposes as described in subsection (1) of this section and may also be used to pay the administrative cost of the society in administering the grant program; and

(B) Costs associated with the new Colorado state museum shall be from the portion of the state historical fund not reserved for the statewide grant program for preservation, or from other money as designated by the general assembly.

(III) On or before October 1, 2008, the state treasurer shall transfer from the state historical fund to the state museum cash fund created pursuant to section 24-80-214 the sum of three million dollars. On or before October 1, 2009, the state treasurer shall transfer from the state historical fund to the state museum cash fund the sum of two million dollars. On or before October 1, 2010, the state treasurer shall transfer from the state historical fund to the state museum cash fund the sum of two million dollars.

(IV) For the fiscal year beginning on July 1, 2011, and for each fiscal year thereafter through the fiscal year beginning on July 1, 2045, so long as there are payments due on an agreement entered into pursuant to the provisions of section 3 of Senate Bill 08-206, as enacted at the second regular session of the sixty-sixth

general assembly, the general assembly shall appropriate to the state historical society from the museum and preservation operations account of the state historical fund, the general fund, or from any other available fund an amount equal to the annual aggregate rentals or other payments due from state funds; except that the amount shall not exceed four million nine hundred ninety-eight thousand dollars in any given fiscal year.

(6) For the fiscal year commencing July 1, 2014, the state treasurer shall transfer one million dollars from the state historical fund at the beginning of the fiscal year to the capital construction fund created in section 24-75-302 for historic renovation of the state house of representatives' chambers and the state senate's chambers.

(7) For the fiscal year commencing July 1, 2015, the state treasurer shall transfer one million dollars from the preservation grant program account of the state historical fund at the beginning of the fiscal year to the capital construction fund created in section 24-75-302 for historic renovation of the state house of representatives' chambers and the state senate's chambers.

(8) For the fiscal year commencing July 1, 2016, the state treasurer shall transfer one million dollars from the preservation grant program account of the state historical fund at the beginning of the fiscal year to the capital construction fund created in section 24-75-302 for historic renovation of the state house of representatives' chambers and the state senate's chambers.

(9) For the fiscal year commencing July 1, 2017, the state treasurer shall transfer one million dollars from the preservation grant program account of the state historical fund on October 1, 2017, to the capital construction fund created in section 24-75-302 to restore the windows and granite exterior of the state capitol building.

(10) For the fiscal year commencing July 1, 2018, the state treasurer shall transfer eight hundred fifty thousand dollars from the preservation grant program account of the state historical fund on October 1, 2018, to the legislative department cash fund created in section 2-2-1601 to restore the old supreme court chamber in the state capitol building.

(11) For the fiscal year commencing July 1, 2018, the state treasurer shall transfer one hundred fifty thousand dollars from the preservation grant program account of the state historical fund on October 1, 2018, to the capital construction fund created in section 24-75-302 for historical property rehabilitation in the capitol complex.

(12) For the state fiscal year commencing July 1, 2019, the state treasurer shall transfer one million dollars from the preservation grant program account of the state historical fund on October 1, 2019, to the capital construction fund created in section 24-75-302 for repainting of the interior of the dome of the state capitol building. On July 1, 2020, the state treasurer shall transfer an amount equal to the unencumbered portion of the money provided pursuant to

this subsection (12) as of such date for repainting the interior of the dome of the state capitol building from the capital construction fund created in section 24-75-302 to the museum and preservation operations account created in subsection (5)(c)(I)(B) of this section.

(13) Notwithstanding any other provision of this section to the contrary, for each of the state fiscal years commencing July 1, 2020, and July 1, 2021, the state historical society is authorized to direct the state treasurer to transfer a cumulative total of up to one million dollars from the preservation grant program account created in subsection (5)(c)(I)(A) of this section to the museum and preservation operations account created in subsection (5)(c)(I)(B) of this section.

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.8.21

DRAFT

LLS NO. 21-0717.01 Esther van Mourik x4215

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Repeal Obsolete Capitol Dome Restoration Fund"

**DEADLINES:** Finalize by: FEB 22, 2021 File by: FEB 25, 2021

**A BILL FOR AN ACT**

101 **CONCERNING THE REPEAL OF STATUTES RELATED TO THE OBSOLETE**  
102 **CAPITOL DOME RESTORATION FUND.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill repeals section 44-30-1201 (5)(c)(III), C.R.S., because that section creates the capitol dome restoration fund, which is obsolete. The capitol dome restoration was a capital project that commenced in 2010 and has since been completed. The statutory sections regarding the capitol dome restoration were repealed in July 2015 but the statute establishing the fund and the

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

necessary transfers of money to the fund were inadvertently left in the statutes. The bill addresses that defect.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 44-30-1201, **amend**  
3 (5)(c)(II); and **repeal** (5)(c)(III) as follows:

4 **44-30-1201. State historical fund - administration - legislative**  
5 **declaration - state museum cash fund - rules -**  
6 **definition.** (5) (c) (II) ~~Except as otherwise specified in subsection~~  
7 ~~(5)(c)(III) of this section~~ All interest and income derived from the deposit  
8 and investment of money in the state historical fund, including the  
9 accounts created in subsections (5)(c)(I)(A) and (5)(c)(I)(B) of this  
10 section, shall remain in the fund. At the end of any fiscal year, all  
11 unexpended and unencumbered money in the fund remains therein and  
12 shall not be transferred or revert to the general fund or any other fund;  
13 except that, for the fiscal year commencing July 1, 2008, and for each  
14 fiscal year thereafter through the fiscal year commencing July 1, 2045, the  
15 society may direct the state treasurer to transfer any unexpended and  
16 unencumbered money in the museum and preservation operations account  
17 at the end of the fiscal year to the state museum cash fund created  
18 pursuant to section 24-80-214. The state treasurer shall be the custodian  
19 of the funds pursuant to section 24-80-209.

20 (III) (A) ~~For the fiscal year commencing July 1, 2010, the state~~  
21 ~~treasurer shall transfer four million dollars from the state historical fund,~~  
22 ~~from the portion reserved for the statewide grant program for preservation~~  
23 ~~pursuant to subsection (5)(d)(II)(A) of this section, at the beginning of the~~  
24 ~~fiscal year to the capitol dome restoration fund, also referred to in this~~  
25 ~~subsection (5)(c)(III) as the "fund", hereby created in the state treasury.~~

1 Money in the fund is subject to appropriation by the general assembly for  
2 repairs and safety improvements to the state capitol dome and supporting  
3 structures and for no other purpose, and any unexpended and  
4 unencumbered money remaining in the fund as of June 30, 2011, shall not  
5 revert to the state historical fund or any other fund. The four million  
6 dollar transfer specified in this subsection (5)(c)(II)(A) shall be reduced,  
7 dollar for dollar, by money deposited into the capitol dome restoration  
8 trust fund as specified in section 2-3-1304.3 (6)(b), if any. This  
9 dollar-for-dollar reduction shall not reduce the authorized fees and  
10 expenses of any fund-raising firm selected by the capital development  
11 committee for cause-related marketing for capitol dome repairs.

12 (B) For the fiscal years commencing July 1, 2011, and July 1,  
13 2012, the state treasurer shall transfer up to four million dollars from the  
14 state historical fund, from the portion reserved for the statewide grant  
15 program for preservation pursuant to subsection (5)(d)(II)(A) of this  
16 section, at the beginning of the fiscal year to the capitol dome restoration  
17 fund; except that the said four-million-dollar maximum amount shall be  
18 reduced, dollar for dollar, by the combined total of money deposited into  
19 the capitol dome restoration trust fund as specified in section 2-3-1304.3  
20 (6)(b), if any, and grants for repairs and safety improvements to the state  
21 capitol dome and supporting structures made by the state historical  
22 society under the grants process set forth in subsection (1) of this section.  
23 This dollar-for-dollar reduction shall not reduce any authorized fees and  
24 expenses of any fund-raising firm selected by the capital development  
25 committee for cause-related marketing for capitol dome repairs.

26 (C) In the event of an emergency contingency expenditure deemed  
27 necessary by the state architect and approved by the office of state



1 ~~planning and budgeting and the capital development committee,~~  
2 ~~supplemental appropriations out of the capitol dome restoration trust fund~~  
3 ~~created in section 2-3-1304.3 (6)(b), and the capitol dome restoration fund~~  
4 ~~created in subsection (5)(c)(HH)(A) of this section may be made from any~~  
5 ~~unexpended and unencumbered money remaining in the specified funds~~  
6 ~~at any time.~~

7 ~~(D) Prior to the end of the 2014-15 state fiscal year and after a~~  
8 ~~complete accounting is available of the total in-kind and monetary~~  
9 ~~donations received through the fund-raising program established in~~  
10 ~~section 2-3-1304.3, an end-of-project accounting shall occur based on the~~  
11 ~~final total cost of the dome restoration construction project to ensure,~~  
12 ~~through the annual general appropriations act, supplemental~~  
13 ~~appropriations acts, or transfers between funds, as necessary, that all of~~  
14 ~~the transfers from the state historical fund specified in subsections~~  
15 ~~(5)(c)(HH)(A) and (5)(c)(HH)(B) of this section, and the 2013-14~~  
16 ~~appropriation from the capital construction fund specified in Senate Bill~~  
17 ~~13-230, are reduced, dollar for dollar, by the combined total of money~~  
18 ~~deposited into the capitol dome restoration trust fund as specified in~~  
19 ~~section 2-3-1304.3 (6)(b), grants for repairs and safety improvements to~~  
20 ~~the state capitol dome and supporting structures made by the state~~  
21 ~~historical society under the grants process set forth in subsection (1) of~~  
22 ~~this section, any money received for the recycling of salvaged building~~  
23 ~~materials from the state capitol dome during the construction period, and~~  
24 ~~any in-kind gifts and donations, such as materials or labor, that resulted~~  
25 ~~in the reduction of the total cost of the construction. The total value of~~  
26 ~~any in-kind gifts and donations for purposes of the dollar-for-dollar~~  
27 ~~reduction specified in this subsection (5)(c)(HH)(D) shall be calculated by~~

1 ~~the department of personnel and approved by the capital development~~  
2 ~~committee as specified in section 2-3-1304.3 (6)(a)(H).~~

3 ~~(E) Until completion of the capitol dome restoration project as~~  
4 ~~reported by the state architect pursuant to section 2-3-1304.5, the~~  
5 ~~Colorado historical society shall submit an annual report to the capital~~  
6 ~~development committee on or before December 15 of each year~~  
7 ~~concerning all grants awarded from the state historical fund.~~

8 **SECTION 2. Act subject to petition - effective date.** This act  
9 takes effect at 12:01 a.m. on the day following the expiration of the  
10 ninety-day period after final adjournment of the general assembly; except  
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
12 of the state constitution against this act or an item, section, or part of this  
13 act within such period, then the act, item, section, or part will not take  
14 effect unless approved by the people at the general election to be held in  
15 November 2022 and, in such case, will take effect on the date of the  
16 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Megan Waples, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Repeal of statutes allowing certain 17-year-old individuals to vote in primary elections.

### Summary

In 2019, the General Assembly enacted statutes authorizing a person who is preregistered to vote, is seventeen years old on the date of a primary election, and will be eighteen years old on the date of the next general election to vote in the primary election as part of House Bill 19-1278. At the 2020 general election, the voters of the state adopted Amendment 76, which amended the provisions in the Colorado constitution concerning the qualifications of an elector. Under Amendment 76, **only** a citizen of the United States who is at least eighteen years old is eligible to vote in any election. Under the amended constitutional language, the provisions of House Bill 19-1278 allowing certain seventeen-year-old individuals to vote in a primary election are unconstitutional. The Office of Legislative Legal Services identified this conflict.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC or the members of the General Assembly. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

# Analysis

## 1. Background.

In House Bill 19-1278, the General Assembly enacted section 1-2-101 (2)(c), C.R.S., authorizing an individual who is preregistered in accordance with the "Uniform Election Code of 1992" (code), is seventeen years of age on the date of a primary election, and will be eighteen years of age on the date of the next general election to vote in the primary election:

**1-2-101. Qualifications for registration – preregistration.** (2)(c) A person preregistered under this subsection (2) who is seventeen years of age on the date of a primary election or presidential primary election and who will be eighteen years of age on the date of the next general election is entitled to vote in the primary election or presidential primary election.

House Bill 19-1278 made additional conforming amendments throughout the code implementing this provision, including provisions requiring county clerks and recorders to send mail ballots to eligible preregistrants in a primary election and allowing an eligible preregistrant to vote in person at a primary election.<sup>2</sup>

At the time House Bill 19-1278 was enacted, section 1 of article VII of the Colorado Constitution provided:

**Section 1. Qualifications of Elector.** Every citizen of the United States who has attained the age of eighteen years, has resided in this state for such time as may be prescribed by law, and has been duly registered as a voter if required by law shall be qualified to vote at all elections.

At the November 2020 general election, Colorado voters approved Amendment 76, which amended this constitutional provision. Amendment 76 was a citizen-initiated amendment that changed the language of section 1 to read:

**Only** a citizen of the United States who has attained the age of eighteen years, has resided in this state for such time as may be prescribed by law, and has been duly registered as a voter if required by law shall be qualified to vote at all elections. (**Emphasis added.**)

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<sup>2</sup> See §§ 1-7-201 (1), (2.3), 1-7.5-107 (3)(a)(I), C.R.S. See also, §§ 1-2-205 (2), 1-2-202.5 (3)(a)(I), 1-2-227 (2), 1-3-101 (1)(a), 1-4-806, 1-9-203 (4), and 1-9-204 (1), C.R.S. (attached as Addendum A).

According to the 2020 Ballot Information Booklet, commonly called the Blue Book, the amendment was intended to preclude the state from pursuing policies that would allow noncitizens to vote by specifying in the constitution that *only* a citizen of the United States who met the other qualifications of the section could vote.<sup>3</sup> The amendment passed with 62.9% of the vote.

## **2. The passage of Amendment 76 makes the statutes allowing certain seventeen-year-old individuals to vote in primary elections unconstitutional.**

The statutes allowing a preregistered individual who is seventeen years old on the date of a primary election and who will be eighteen on the date of the general election to vote in the primary election are in conflict with the amended language of article VII, section 1, rendering them unconstitutional. When construing a constitutional amendment, the duty of a reviewing court is to "give effect to the electorate's intent in enacting the amendment."<sup>4</sup> The words of the amendment are given their ordinary and popular meaning, and if the words are unambiguous, they are applied as written.<sup>5</sup> "If the intent of the electorate is not clear from the language of an amendment, courts should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment."<sup>6</sup>

As amended, article VII, section 1 of the Colorado Constitution unambiguously states that only a citizen of the United States who is at least eighteen years old is qualified to vote in an election. Unlike the previous language of "every citizen," the phrase "only a citizen" unequivocally limits the right to vote to those who meet the criteria specified in article VII, section 1, including that the individual be at least eighteen years old. Colorado courts have repeatedly found that the use of the word "only" is exclusionary. For example, in considering a statute concerning the circumstances in which a court can disqualify a district attorney, the Colorado Supreme Court held, "in using the word 'only' and defining with specificity the circumstances under which disqualification is proper, the [statute] eliminates" other bases which are not specifically listed as grounds for disqualification.<sup>7</sup> Similarly, in applying a statute governing when a child may be

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<sup>3</sup> 2020 State Ballot Information Booklet, Legislative Council of the Colorado General Assembly, Research Publication No 748-1,18.

<sup>4</sup> *Lobato v. People*, 218 P.3d 358, 375 (Colo. 2009).

<sup>5</sup> *Ritchie v. Polis*, 2020 CO 69, ¶ 7; *Lobato*, 218 P.3d at 375.

<sup>6</sup> *Lobato*, 218 P.3d at 375. (Internal quotation marks and citation omitted).

<sup>7</sup> *People ex rel. N.R.*, 139 P.3d 671, 676 (Colo. 2006).

available for adoption, the Court of Appeals looked to the dictionary definition of "only" and held that it was "synonymous with 'exclusively' or 'solely'...and its use serves to delimit" the situations in which a child could be available for adoption.<sup>8</sup> Following the adoption of Amendment 76, article VII, section 1 establishes with specificity the qualifications of electors. The use of the word "only" necessarily excludes those who do not meet those criteria from being qualified electors.

To the extent the language of the amendment itself is not clear, a reviewing court may look to other contemporaneous indicators of the intent of the electorate, including the Blue Book's explanation of the impact of the initiative.<sup>9</sup> In this case, the Blue Book noted that the purpose of Amendment 76 was to prevent the state from expanding the right to vote beyond the qualifications set forth in the constitution. While the objective of the amendment was to ensure the enforcement of the requirement for citizenship, the Blue Book informed voters that the amendment would also prevent "the state from extending voter eligibility to...those under the age of 18."<sup>10</sup> It also specifically noted that "under Amendment 76, 17-year-olds who are currently able to vote in primary elections will no longer be eligible to do so."<sup>11</sup> Thus voters were informed and understood that passage of the measure would render section 1-2-101 (2)(c), C.R.S., and the associated statutes implementing its provisions unconstitutional.

## **Statutory Charge<sup>12</sup>**

The Statutory Revision Committee (SRC) is charged with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The sections of the code authorizing certain seventeen-

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<sup>8</sup> *In re Adoption of T.K.J.*, 931 P.2d 488, 492 (Colo. Ct. App. 1996).

<sup>9</sup> *See, e.g., Lobato*, 218 P.3d at 375.

<sup>10</sup> *2020 State Ballot Information Booklet*, 18.

<sup>11</sup> *Id.*

<sup>12</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

year-old individuals to vote in primary elections and requiring county clerks and recorders to send those individuals mail ballots in primary elections, along with other implementing requirements, contradict the amended language of article VII, section 1, of the Colorado constitution. Repealing these provisions comports with the committee's charge to eliminate contradictory rules of law and to harmonize the laws of the state; however, a Colorado court has not yet considered or issued an opinion on the question of whether Amendment 76 renders these statutes unconstitutional.

## **Proposed Bill**

The attached bill draft repeals the statutory provisions enacted in House Bill 19-1278 authorizing an individual who is preregistered, is seventeen years old on the date of a primary election, and who will be eighteen years old on the date of a general election to vote in the primary election, including the conforming amendments to implement that requirement.

## ADDENDUM A

**1-2-101. Qualifications for registration - preregistration.** (1) Every person who is eighteen years of age or older on the date of the next election and who has the following qualifications is entitled to register to vote at all elections:

- (a) The person is a citizen of the United States; and
- (b) The person has resided in this state twenty-two days immediately prior to the election at which the person intends to vote.

(2) (a) (I) Notwithstanding subsection (1) of this section, upon satisfactory proof of age, every person who is otherwise qualified to register and is sixteen years of age or older but will not have reached eighteen years of age by the date of the next election may preregister and update his or her preregistered information by any means authorized in this article for persons eighteen years of age or older. Upon reaching eighteen years of age, the person is automatically registered.

(II) Repealed.

(b) The registration requirements of section 1-2-201 apply to a person preregistering to vote under this subsection (2).

(c) A person preregistered under this subsection (2) who is seventeen years of age on the date of a primary election or presidential primary election and who will be eighteen years of age on the date of the next general election is entitled to vote in the primary election or presidential primary election.

(3) Repealed.

**1-2-202.5. Online voter registration - online changes in elector information.** (3) The electronic voter registration form must include:

(a) (I) The questions "Are you a citizen of the United States of America?", "Are you at least sixteen years of age?", "Do you understand that you must be at least seventeen years old and turning eighteen years old on or before the date of the next general election to be eligible to vote in a primary election, and at least eighteen years old to be eligible to vote in any other election?", "Have you resided in Colorado for at least twenty-two days immediately prior to the election?", "Do you reside in the precinct in which you intend to register?", "Is the address you have listed your sole legal place of residence for purposes of voting?", and "Do you affirm that you will not cast more than one ballot in any election?" and places for the elector to input answers to the questions.

**1-2-205. Self-affirmation made by elector.** (2) Each elector making application for registration or preregistration shall make the following self-



affirmation: "I, ....., affirm that I am a citizen of the United States; I have been a resident of Colorado for at least twenty-two days immediately before an election I intend to vote in; I am at least sixteen years old; and I understand that I must be at least seventeen and turning eighteen on or before the date of the next general election to be eligible to vote in a primary election, and at least eighteen to be eligible to vote in any other election. I further affirm that the residence address I provided is my sole legal place of residence. I certify under penalty of perjury that the information I have provided on this application is true to the best of my knowledge and belief; and that I have not, nor will I, cast more than one ballot in any election."

**1-2-227. Custody and preservation of records.** (2) The voter information provided by a preregistrant who will not turn eighteen years of age by the date of the next election shall be kept confidential in the same manner as, and using the programs developed for, information that is kept confidential pursuant to section 24-72-204 (3.5). Nothing in this subsection (2) shall be construed to require any request, application, or fee for such confidentiality. When the preregistrant will be eighteen years of age on the date of the next election, or on January 1 of the year in which the preregistrant will be eligible to vote in any primary election under section 1-2-101 (2)(c), such information is no longer confidential under this subsection (2).

**1-3-101. Party affiliation required - residence.** (1) (a) In order to vote at any precinct caucus, assembly, or convention of a political party, the elector must be a resident of the precinct for twenty-two days, must be registered to vote no later than twenty-two days before the caucus, assembly, or convention, and must be affiliated with the political party holding the caucus, assembly, or convention for at least twenty-two days as shown in the statewide voter registration system; except that any registered elector who has attained the age of eighteen years or who has become a naturalized citizen during the twenty-two days immediately preceding the meeting may vote at any caucus, assembly, or convention even though the elector has been affiliated with the political party for less than twenty-two days. Any preregistrant who is seventeen years of age on the date of a caucus and who will be eighteen years of age on the date of the next general election may either vote at any caucus, assembly, or convention or be elected as a delegate to any assembly or convention even though the elector has been affiliated with the political party for less than twenty-two days.

**1-4-806. Preregistrants eligible to sign petitions.** A preregistrant who is eligible to vote in a primary election under section 1-2-101 (2)(c) is eligible to sign a petition under this part 8 to nominate a candidate for the primary election or for the next general election.

**1-7-201. Voting at primary election.** (1) Any registered elector, including a preregistrant who is eligible under section 1-2-101 (2)(c), who has declared an affiliation with a political party that is participating in a primary election and who desires to vote for candidates of that party at a primary election shall show identification, as defined in section 1-1-104 (19.5), write his or her name and address on a form available at the voter service and polling center, and give the form to one of the election judges.

(2.3) An eligible unaffiliated elector, including a preregistrant who is eligible under section 1-2-101 (2)(c), is entitled to vote in the primary election of a major political party without affiliating with that political party. To vote in a political party's primary election without declaring an affiliation with the political party, any eligible unaffiliated elector shall declare to the election judges the name of the political party in whose primary election the elector wishes to vote. Thereupon, the election judges shall deliver the appropriate party ballot to the elector. In addition, any eligible unaffiliated elector may openly declare to the election judges the name of the political party with which the elector wishes to affiliate and complete the necessary forms. An eligible elector must separately date and sign or date and initial a declaration of affiliation with a political party form in such manner that the elector clearly acknowledges that the affiliation has been properly recorded. Thereupon, the election judges shall deliver the appropriate party ballot to the eligible elector.

**1-7.5-107. Procedures for conducting mail ballot election - primary elections - first-time voters casting a mail ballot after having registered by mail to vote - in-person request for ballot - repeal.** (3) (a) (I) Not sooner than twenty-two days before a general, primary, or other mail ballot election, and no later than eighteen days before the election, the county clerk and recorder or designated election official shall mail to each active registered elector, at the last mailing address appearing in the registration records and in accordance with United States postal service regulations, a mail ballot packet, which must be marked "DO NOT FORWARD. ADDRESS CORRECTION REQUESTED.", or any other similar statement that is in accordance with United States postal service regulations. For a primary mail ballot election, active registered electors includes preregistrants eligible to vote in that primary under section 1-2-101 (2)(c). Nothing in this subsection (3) affects any provision of this code governing the delivery of mail ballots to an absent uniformed services elector, nonresident overseas elector, or resident overseas elector covered by the federal "Uniformed and Overseas Citizens Absentee Voting Act", 52 U.S.C. sec. 20301 et seq.

**1-9-203. Challenge questions asked person intending to vote.** (4) (a) If the person is challenged as not eligible to vote in an election other than a primary election because the person will not be eighteen years of age or older on or before election day, an election judge shall ask the following question: To the best of your knowledge and belief, will you be eighteen years of age or older on election day?

(b) If the person is challenged as not eligible to vote in a primary election because the person will not be eighteen years of age on or before the date of the next general election, an election judge shall ask the following question: To the best of your knowledge and belief, are you at least seventeen years of age and will you be at least eighteen years of age on or before the date of the next general election?

**1-9-204. Oath of challenged elector.** (1) An election judge shall tender an oath substantially in the following form: "I do solemnly swear or affirm that I have fully and truthfully answered all questions that have been put to me concerning my place of residence and my qualifications as an eligible elector at this election. I further swear or affirm that I am a citizen of the United States; that I am at least seventeen years of age and will be at least eighteen years of age on or before the date of the next general election if I am voting in a primary election or that I will be of the age of eighteen years or older on election day if I am voting in any other election; that I have been a resident of this state for at least twenty-two days immediately preceding this election and have not maintained a home or domicile elsewhere; that I am a registered elector in this precinct; that I am eligible to vote at this election; and that I have not previously voted at this election."

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.18.21

DRAFT

LLS NO. 21-0804.01 Megan Waples x4348

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Repeal 17 Year Olds Voting Primary Elections"

**A BILL FOR AN ACT**

101      **CONCERNING THE REPEAL OF STATUTES ALLOWING AN INDIVIDUAL**  
102              **WHO IS SEVENTEEN YEARS OLD ON THE DATE OF A PRIMARY AND**  
103              **WILL BE EIGHTEEN YEARS OLD ON THE DATE OF THE NEXT**  
104              **GENERAL ELECTION TO PARTICIPATE IN THE PRIMARY ELECTION**  
105              **AS A RESULT OF THE PASSAGE OF AMENDMENT 76 AT THE 2020**  
106              **GENERAL ELECTION.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** As part of House Bill 19-1278,

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

the general assembly enacted statutes authorizing a person who is preregistered under the "Uniform Election Code of 1992" (code), is 17 years old on the date of a primary election, and will be 18 years old on the date of the next general election to vote in the primary election. House Bill 19-1278 made conforming amendments throughout the code to implement this change. In the 2020 general election, the voters of the state adopted Amendment 76, amending the state constitution to specify that "[o]nly a citizen of the United States who has attained the age of eighteen years...shall be qualified to vote at all elections".

The bill repeals the provisions enacted as part of House Bill 19-1278 authorizing certain 17 year olds to vote and participate in primary elections.

---

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 1-2-101, **repeal** (2)(c) as follows:

**1-2-101. Qualifications for registration - preregistration.**

(2) (c) ~~A person preregistered under this subsection (2) who is seventeen years of age on the date of a primary election or presidential primary election and who will be eighteen years of age on the date of the next general election is entitled to vote in the primary election or presidential primary election.~~

**SECTION 2.** In Colorado Revised Statutes, 1-2-202.5, **amend** (3)(a)(I) as follows:

**1-2-202.5. Online voter registration - online changes in elector information.** (3) The electronic voter registration form must include:

(a) (I) The questions "Are you a citizen of the United States of America?", "Are you at least sixteen years of age?", "Do you understand that you must be at least ~~seventeen years old and turning eighteen years old on or before the date of the next general election to be eligible to vote in a primary election, and at least eighteen years old to be eligible to vote?~~", ~~in any other election?~~", "Have you resided in Colorado for at least

1 twenty-two days immediately prior to the election?", "Do you reside in the  
2 precinct in which you intend to register?", "Is the address you have listed  
3 your sole legal place of residence for purposes of voting?", and "Do you  
4 affirm that you will not cast more than one ballot in any election?" and  
5 places for the elector to input answers to the questions.

6 **SECTION 3.** In Colorado Revised Statutes, 1-2-205, **amend** (2)  
7 as follows:

8 **1-2-205. Self-affirmation made by elector.** (2) Each elector  
9 making application for registration or preregistration shall make the  
10 following self-affirmation: "I, ..., affirm that I am a citizen of the United  
11 States; I have been a resident of Colorado for at least twenty-two days  
12 immediately before an election I intend to vote in; I am at least sixteen  
13 years old; and I understand that I must be at least ~~seventeen and turning~~  
14 ~~eighteen on or before the date of the next general election to be eligible~~  
15 ~~to vote in a primary election, and at least eighteen to be eligible to vote.~~  
16 ~~in any other election.~~ I further affirm that the residence address I provided  
17 is my sole legal place of residence. I certify under penalty of perjury that  
18 the information I have provided on this application is true to the best of  
19 my knowledge and belief; and that I have not, nor will I, cast more than  
20 one ballot in any election."

21 **SECTION 4.** In Colorado Revised Statutes, 1-2-227, **amend** (2)  
22 as follows:

23 **1-2-227. Custody and preservation of records.** (2) The voter  
24 information provided by a preregistrant who will not turn eighteen years  
25 of age by the date of the next election shall be kept confidential in the  
26 same manner as, and using the programs developed for, information that  
27 is kept confidential pursuant to section 24-72-204 (3.5). Nothing in this

1 subsection (2) shall be construed to require any request, application, or  
2 fee for such confidentiality. When the preregistrant will be eighteen years  
3 of age on the date of the next election, ~~or on January 1 of the year in~~  
4 ~~which the preregistrant will be eligible to vote in any primary election~~  
5 ~~under section 1-2-101 (2)(c)~~; such information is no longer confidential  
6 under this subsection (2).

7 **SECTION 5.** In Colorado Revised Statutes, 1-3-101, **amend**  
8 (1)(a) as follows:

9 **1-3-101. Party affiliation required - residence.** (1) (a) In order  
10 to vote at any precinct caucus, assembly, or convention of a political  
11 party, the elector must be a resident of the precinct for twenty-two days,  
12 must be registered to vote no later than twenty-two days before the  
13 caucus, assembly, or convention, and must be affiliated with the political  
14 party holding the caucus, assembly, or convention for at least twenty-two  
15 days as shown in the statewide voter registration system; except that any  
16 registered elector who has attained the age of eighteen years or who has  
17 become a naturalized citizen during the twenty-two days immediately  
18 preceding the meeting may vote at any caucus, assembly, or convention  
19 even though the elector has been affiliated with the political party for less  
20 than twenty-two days. ~~Any preregistrant who is seventeen years of age on~~  
21 ~~the date of a caucus and who will be eighteen years of age on the date of~~  
22 ~~the next general election may either vote at any caucus, assembly, or~~  
23 ~~convention or be elected as a delegate to any assembly or convention even~~  
24 ~~though the elector has been affiliated with the political party for less than~~  
25 ~~twenty-two days.~~

26 **SECTION 6.** In Colorado Revised Statutes, **repeal** 1-4-806 as  
27 follows:

1           **1-4-806. Preregistrants eligible to sign petitions.** A preregistrant  
2   ~~who is eligible to vote in a primary election under section 1-2-101 (2)(c)~~  
3   ~~is eligible to sign a petition under this part 8 to nominate a candidate for~~  
4   ~~the primary election or for the next general election.~~

5           **SECTION 7.** In Colorado Revised Statutes, 1-7-201, **amend** (1)  
6   and (2.3) as follows:

7           **1-7-201. Voting at primary election.** (1) Any registered elector  
8   ~~including a preregistrant who is eligible under section 1-2-101 (2)(c),~~ who  
9   has declared an affiliation with a political party that is participating in a  
10   primary election and who desires to vote for candidates of that party at a  
11   primary election shall show identification, as defined in section 1-1-104  
12   (19.5), write his or her name and address on a form available at the voter  
13   service and polling center, and give the form to one of the election judges.

14           (2.3) An eligible unaffiliated elector ~~including a preregistrant who~~  
15   ~~is eligible under section 1-2-101 (2)(c),~~ is entitled to vote in the primary  
16   election of a major political party without affiliating with that political  
17   party. To vote in a political party's primary election without declaring an  
18   affiliation with the political party, any eligible unaffiliated elector shall  
19   declare to the election judges the name of the political party in whose  
20   primary election the elector wishes to vote. Thereupon, the election  
21   judges shall deliver the appropriate party ballot to the elector. In addition,  
22   any eligible unaffiliated elector may openly declare to the election judges  
23   the name of the political party with which the elector wishes to affiliate  
24   and complete the necessary forms. An eligible elector must separately  
25   date and sign or date and initial a declaration of affiliation with a political  
26   party form in such manner that the elector clearly acknowledges that the  
27   affiliation has been properly recorded. Thereupon, the election judges



1 shall deliver the appropriate party ballot to the eligible elector.

2 **SECTION 8.** In Colorado Revised Statutes, 1-7.5-107, **amend**  
3 (3)(a)(I) as follows:

4 **1-7.5-107. Procedures for conducting mail ballot election -**  
5 **primary elections - first-time voters casting a mail ballot after having**  
6 **registered by mail to vote - in-person request for ballot - repeal.**

7 (3) (a) (I) Not sooner than twenty-two days before a general, primary, or  
8 other mail ballot election, and no later than eighteen days before the  
9 election, the county clerk and recorder or designated election official shall  
10 mail to each active registered elector, at the last mailing address  
11 appearing in the registration records and in accordance with United States  
12 postal service regulations, a mail ballot packet, which must be marked  
13 "DO NOT FORWARD. ADDRESS CORRECTION REQUESTED.", or  
14 any other similar statement that is in accordance with United States postal  
15 service regulations. ~~For a primary mail ballot election, active registered~~  
16 ~~electors includes preregistrants eligible to vote in that primary under~~  
17 ~~section 1-2-101 (2)(c).~~ Nothing in this subsection (3) affects any  
18 provision of this code governing the delivery of mail ballots to an absent  
19 uniformed services elector, nonresident overseas elector, or resident  
20 overseas elector covered by the federal "Uniformed and Overseas  
21 Citizens Absentee Voting Act", 52 U.S.C. sec. 20301 et seq.

22 **SECTION 9.** In Colorado Revised Statutes, 1-9-203, **amend** (4)  
23 as follows:

24 **1-9-203. Challenge questions asked person intending to vote.**

25 (4) ~~(a)~~ If the person is challenged as not eligible to vote ~~in an election~~  
26 ~~other than a primary election~~ because the person will not be eighteen  
27 years of age or older on or before election day, an election judge shall ask

1 the following question: To the best of your knowledge and belief, will  
2 you be eighteen years of age or older on election day?

3 ~~(b) If the person is challenged as not eligible to vote in a primary~~  
4 ~~election because the person will not be eighteen years of age on or before~~  
5 ~~the date of the next general election, an election judge shall ask the~~  
6 ~~following question: To the best of your knowledge and belief, are you at~~  
7 ~~least seventeen years of age and will you be at least eighteen years of age~~  
8 ~~on or before the date of the next general election?~~

9 **SECTION 10.** In Colorado Revised Statutes, 1-9-204, **amend** (1)  
10 as follows:

11 **1-9-204. Oath of challenged elector.** (1) An election judge shall  
12 tender an oath substantially in the following form: "I do solemnly swear  
13 or affirm that I have fully and truthfully answered all questions that have  
14 been put to me concerning my place of residence and my qualifications  
15 as an eligible elector at this election. I further swear or affirm that I am  
16 a citizen of the United States; that ~~I am at least seventeen years of age and~~  
17 ~~will be at least eighteen years of age on or before the date of the next~~  
18 ~~general election if I am voting in a primary election or that I will be of the~~  
19 ~~age of eighteen years or older on election day; if I am voting in any other~~  
20 ~~election;~~ that I have been a resident of this state for at least twenty-two  
21 days immediately preceding this election and have not maintained a home  
22 or domicile elsewhere; that I am a registered elector in this precinct; that  
23 I am eligible to vote at this election; and that I have not previously voted  
24 at this election."

25 **SECTION 11. Act subject to petition - effective date -**  
26 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
27 the expiration of the ninety-day period after final adjournment of the

1 general assembly; except that, if a referendum petition is filed pursuant  
2 to section 1 (3) of article V of the state constitution against this act or an  
3 item, section, or part of this act within such period, then the act, item,  
4 section, or part will not take effect unless approved by the people at the  
5 general election to be held in November 2022 and, in such case, will take  
6 effect on the date of the official declaration of the vote thereon by the  
7 governor.

8 (2) This act applies to elections conducted on or after the  
9 applicable effective date of this act.

10 <{ *Would the committee prefer a safety clause?* }>

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jason Gelender, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Update of Senate Bill 19-263 Effective Date Clause

### Summary

Senate Bill 20-152, a Statutory Revision Committee bill, corrected the effective date section of Senate Bill 19-263 to ensure that if the voters of the state approved a referred ballot issue (ballot issue) at the 2020 general election authorizing the state to issue transportation revenue anticipation notes (TRANS), the TRANS would be issued in lieu of, and not in addition to, lease-purchase agreements (COPS) that current law, originally enacted as part of Senate Bill 17-267, requires the state to execute during the 2020-21 and 2021-22 state fiscal years (FYs).

After Senate Bill 20-152 was enacted, the General Assembly enacted House Bill 20-1376, which delayed submission of the ballot issue to the November 2021 statewide election. Because House Bill 20-1376 did not include a conforming amendment to the Senate Bill 19-263 effective date section as amended by Senate Bill 20-152, approval of the ballot issue at the November 2021 statewide election would cause TRANS to be issued in addition to, and not in lieu of, the state FY 2021-22 COPS. That result would be directly contrary to the General Assembly's intent that TRANS be issued in lieu of, and not in addition to, any as yet unexecuted COPS.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

## Analysis

### 1. The General Assembly intended that any voter-approved TRANS be issued in lieu of, and not in addition to, COPS.

In 2017, the General Assembly enacted section 24-82-1303, C.R.S., as part of Senate Bill 17-267. In relevant part, the statute requires the state to execute up to \$2 billion of COPS in four equal tranches of up to \$500 million during each of the 2018-19, 2019-20, 2020-21, and 2021-22 state fiscal years to fund transportation projects. The state has executed the FY 2018-19 and 2019-20 COPS and is expected to execute the FY 2020-21 COPS in April of this year.

In 2018, the General Assembly enacted Senate Bill 18-001. The bill required a statewide ballot issue seeking authorization for the state to issue up to \$2.34 billion of TRANS to be referred to voters at the November 2019 statewide election, unless the voters approved a citizen-initiated ballot issue authorizing the state to issue TRANS at the November 2018 general election.<sup>2</sup> Senate Bill 18-001 also amended section 24-82-1301, C.R.S., so that, if the voters approved the referred ballot issue, the TRANS authorized would be issued in lieu of, rather than in addition to, the FY 2019-20, FY 2020-21, and FY 2021-22 COPS.<sup>3</sup> At the 2018 general election, the voters rejected two citizen-initiated ballot issues that would have authorized the state to issue TRANS.<sup>4</sup>

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<sup>2</sup> The referred ballot issue is codified in § 43-4-705 (13)(b)(III), C.R.S., and, as originally enacted in S.B. 18-001, stated:

**43-4-705. Revenue anticipation notes - ballot issue - repeal.** (13) (b) (III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the November 2019 statewide election the following ballot issue: "Shall state of Colorado debt be increased \$2,337,000,000, with a maximum repayment cost of \$3,250,000,000, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

<sup>3</sup> See S.B. 18-001 §§ 3 and 13.

<sup>4</sup> The rejected ballot issues were propositions 109 ("Authorize Bonds for Highway Projects") and 110 ("Authorize Sales Tax and Bonds for Highway Projects") that would have authorized the state to issue TRANS.

In 2019, the General Assembly enacted Senate Bill 19-263, which delayed the referral of the ballot issue from the November 2019 statewide election to the November 2020 general election. The bill also further amended the provisions of section 24-82-1303, C.R.S., lowering the amount of TRANS authorized to be issued and repealing only the requirement that the state execute the FY 2020-21 and 2021-22 COPS and not the requirement that the state execute the FY 2019-20 COPS.<sup>5</sup> The amendments were crafted to take effect only upon approval of the ballot measure by the voters and again ensured that any voter-approved TRANS would be issued in lieu of, and not in addition to, COPS.

Senate Bill 20-152, a Statutory Revision Committee bill, corrected an error in the effective date clause of Senate Bill 19-263 so that the amendments to section 24-82-1303, C.R.S., are contingent upon the passage of a **referred**, rather than a **citizen-initiated**, ballot issue.<sup>6</sup>

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<sup>5</sup> See S.B. 19-263 §§ 4 and 5. S.B. 19-263 amended § 43-4-705 (13)(b)(III), C.R.S., which includes the ballot issue language as follows:

**43-4-705. Revenue anticipation notes - ballot issue - repeal.** (13) (b) (III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the November ~~2019 statewide~~ 2020 GENERAL election the following ballot issue: "Shall state of Colorado debt be increased ~~\$2,337,000,000~~ **\$1,837,000,000**, with a maximum repayment cost of ~~\$3,250,000,000~~ **\$2,560,000,000**, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

<sup>6</sup> S.B. 20-152 § 1 amended the effective date clause of S.B. 19-263 as follows:

**Error! Main Document Only.** **SECTION 1.** In Session Laws of Colorado 2019, section 8 of chapter 334, **amend** (2) as follows:

Section 8. **Effective date.** (2) Section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect only if a ~~citizen-initiated~~ MAJORITY OF THE ELECTORS VOTING ON THE ballot issue that authorizes the state to issue transportation revenue anticipation notes ~~but does not authorize the state to collect additional tax revenue for the purpose of providing a revenue source for repayment of the notes~~ AND THAT is submitted to the registered electors of the state for their approval or rejection at the November 2020 general election ~~and a majority of the electors voting on the ballot issue~~ PURSUANT TO SECTION 43-4-705 (13)(b)(III), COLORADO REVISED STATUTES, vote "Yes/For", and, in such case, section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and

The General Assembly then enacted House Bill 20-1376. This bill again delayed the referral of the ballot issue, this time from the November 2020 general election to the November 2021 statewide election. The bill also amended the ballot issue to ensure that the aggregate amount of transportation funding from TRANS and COPS would continue to remain unchanged by lowering the amount of TRANS authorized by the measure.<sup>7</sup> It did not, however, make a conforming amendment to the effective date clause for the corresponding changes to section 24-82-1303, C.R.S., to refer to the 2021 statewide election instead of the 2020 general election.

**2. The error in the effective date section of Senate Bill 19-263, as amended by Senate Bill 20-152, will force the state to both issue TRANS and execute the FY 2021-22 COPS if the ballot issue is approved by voters.**

As amended by Senate Bill 20-152, the effective date section of Senate Bill 19-263 states:

Section 8. **Effective date.** (2) Section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect only if a majority of the electors voting on the ballot issue that authorizes the state to issue transportation revenue anticipation notes and that is submitted to the registered electors of the state for their approval or rejection at the **November 2020 general election** pursuant to section 43-4-705 (13)(b)(III), Colorado Revised Statutes, vote "Yes/For", and, in such case, section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b),

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(2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect on the date of the official declaration of the vote thereon by the governor.

<sup>7</sup> This was necessary because due to the delay in placing the issue before the voters, the FY 2020-21 COPS would already have been issued by the time the ballot issue went to the voters. *See* S.B. 20-1376 § 5, which amended § 43-4-705 (13)(b)(III), C.R.S., which includes the ballot issue language, as follows:

**Error! Main Document Only.43-4-705. Revenue anticipation notes - ballot issue - repeal.** (13) (b)**Error! Main Document Only.**(III) The secretary of state shall submit to the registered electors of the state for their approval or rejection at the ~~November 2020 general~~ **NOVEMBER 2021 STATEWIDE** election the following ballot issue: "Shall state of Colorado debt be ~~increased \$1,837,000,000~~ **INCREASED \$1,337,000,000**, with a maximum repayment cost of ~~\$2,560,000,000~~ **OF \$1,865,000,000**, without raising taxes, through the issuance of transportation revenue anticipation notes for the purpose of addressing critical priority transportation needs in the state by financing transportation projects, shall note proceeds and investment earnings on note proceeds be excluded from state fiscal year spending limits, and shall the amount of lease-purchase agreements required by current law to be issued for the purpose of financing transportation projects be reduced?"

and (2)(d)(II), Colorado Revised Statutes, as amended in section 4 of this act, takes effect on the date of the official declaration of the vote thereon by the governor. **(Emphasis added)**

Under this language, the amendments to section 24-82-1303, C.R.S, repealing the requirement that the state execute the FY 2021-22 COPS cannot go into effect, because they are contingent upon approval of the ballot issue at the November 2020 general election. Unless the effective date is corrected to make the repeal contingent upon approval of the ballot issue at the November 2021 statewide election instead, approval of the ballot issue at that time will cause the state to both issue TRANS and execute the FY 2021-22 COPS. This outcome would thwart the General Assembly's intent that TRANS be issued in lieu of, and not in addition to, COPS.

### **Statutory Charge<sup>8</sup>**

This issue fits within the Statutory Revision Committee's charge because it corrects a defect in the law that will, if the voters of the state approve the referred ballot issue that authorizes the state to issue TRANS at the November 2021 statewide election, thwart the clear intent of the General Assembly that TRANS be issued in lieu of, and not in addition to, FY 2021-22 COPS.

### **Proposed Bill**

The attached draft amends the 2019 Session Laws of Colorado to correct the effective date section of Senate Bill 19-263, as amended by Senate Bill 20-152, as described above.

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<sup>8</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.



First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
2.4.21

DRAFT

LLS NO. 21-0789.01 Jason Gelender x4330

COMMITTEE BILL

Statutory Revision Committee

**BILL TOPIC:** "Update Senate Bill 19-263 Effective Date Clause"

**A BILL FOR AN ACT**

101      **CONCERNING THE UPDATING OF THE EFFECTIVE DATE CLAUSE OF**  
102              **SENATE BILL 19-263, AS AMENDED BY SENATE BILL 20-152, FOR**  
103              **THE PURPOSE OF ENSURING THAT THE BILL ACCOMPLISHES ITS**  
104              **INTENDED LEGAL EFFECT OF ELIMINATING THE REQUIREMENT**  
105              **THAT THE STATE TREASURER EXECUTE LEASE-PURCHASE**  
106              **AGREEMENTS TO FUND TRANSPORTATION PROJECTS DURING THE**  
107              **2021-22 STATE FISCAL YEAR IF A REFERRED BALLOT ISSUE THAT**  
108              **AUTHORIZES THE STATE TO ISSUE TRANSPORTATION REVENUE**  
109              **ANTICIPATION NOTES IS APPROVED AT THE NOVEMBER 2021**  
110              **STATEWIDE ELECTION.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does*

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

*not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** In 2017, the general assembly (GA) enacted Senate Bill 17-267, which required the state treasurer to issue up to \$500 million of lease-purchase agreements (COPS) in each of the 2018-19, 2019-20, 2020-21, and 2021-22 state fiscal years for the purpose of funding transportation projects. In 2018, the GA enacted Senate Bill 18-001 (SB 001), which referred a statewide ballot issue at the November 2019 statewide election that, if approved, would have authorized the state to issue transportation revenue anticipation notes (TRANs) for the purpose of funding transportation projects and prevented the issuance of the last 3 years of COPS. When enacting SB 001, the GA intended that, upon approval of the ballot issue, the TRANs authorized would replace the unissued COPS as a source of funding for transportation projects.

In 2019, the GA enacted Senate Bill 19-263 (SB 263), which delayed the referral of the ballot issue until the November 2020 general election. Consistent with the intent of replacing COPS funding with TRANs funding upon approval of the ballot issue, SB 263 also reduced the authorized amount of TRANs because approval in 2020 rather than 2019 would prevent the issuance of only 2, rather than 3, years of COPS. In 2020, the GA also enacted Senate Bill 20-152 (SB 152), which corrected a technical error in the effective date clause of SB 263 that would have frustrated the intent of the GA by allowing TRANs to be authorized without preventing the issuance of 2 years of COPS.

In 2020, after SB 152 was enacted, the GA enacted House Bill 20-1376, which further delayed the referral of the ballot issue to the November 2021 statewide election and again reduced the authorized amount of TRANs because approval of the ballot issue in 2021, rather than 2020, would prevent the issuance of only one, rather than 2, years of COPS. Due to the additional delay, if the effective date clause of SB 263, as amended by SB 152, is not amended again, TRANs could be authorized without preventing the issuance of one year of COPS. To ensure that this unintended result does not occur, the bill amends the effective date clause of SB 263, as amended by SB 152, to correct this issue and thereby ensure that approval of the ballot issue will prevent the issuance of one year of TRANs as intended by the GA.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Session Laws of Colorado 2019, section 8 of

1 chapter 334, **amend** (2), as (2) is amended by section 1 of chapter 36, (SB  
2 20-152), Session Laws of Colorado 2020, as follows:

3 Section 8. **Effective date.** (2) Section 24-82-1303 (2)(a)(I),  
4 (2)(a)(II), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(d)(II), Colorado Revised  
5 Statutes, as amended in section 4 of this act, takes effect only if a majority  
6 of the electors voting on the ballot issue that authorizes the state to issue  
7 transportation revenue anticipation notes and that is submitted to the  
8 registered electors of the state for their approval or rejection at the  
9 November ~~2020 general~~ 2021 STATEWIDE election pursuant to section  
10 43-4-705 (13)(b)(III), Colorado Revised Statutes, vote "Yes/For", and, in  
11 such case, section 24-82-1303 (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(a)(IV),  
12 (2)(b), and (2)(d)(II), Colorado Revised Statutes, as amended in section  
13 4 of this act, takes effect on the date of the official declaration of the vote  
14 thereon by the governor.

15 **SECTION 2. Safety clause.** The general assembly hereby finds,  
16 determines, and declares that this act is necessary for the immediate  
17 preservation of the public peace, health, or safety.